LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U.S.
FILED
MAY 28 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. [redacted] 170

PREFERRED INSURANCE COMPANY, Grand Rapids, Michigan, a Michigan corporation (in Liquidation, RUSSELL E. VAN HOOSER, Insurance Commissioner of the State of Michigan, and Domiciliary Receiver),

Petitioner,

vs.

JAMES L. BENTLEY, Insurance Commissioner of Georgia, and STATE BOARD OF WORKMEN'S COMPENSATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

ALFRED C. BENNETT,
70 Pine Street,
New York, N. Y. 10005,
IRVIN WALDMAN,
EDWARD J. STODDARD,
Attorneys for Petitioner.

IRVIN WALDMAN,
New York, N. Y.,
Of Counsel.

Adams Press Corp., 180 Cedar Street, N. Y.—Beekman 3-1050-51

TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	3
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	9
I	9
II	13
III	15
IV	17
CONCLUSION	18

APPENDIX:

A—Opinion of Supreme Court of Georgia in Preferred Insurance Company v. Bentley, Commissioner, et al	1a
B—Opinion of Supreme Court of Georgia (October 20, 1967)	6a
C—Excerpts from Petition of James L. Bentley, Insurance Commissioner of the State of Georgia, to be Appointed Ancillary Receiver, etc.	7a
D—Excerpts from Order Appointing James L. Bentley as Ancillary Receiver of Preferred Insurance Company, etc.	10a

PAGE

E—Excerpts from Petition of James L. Bentley, Insurance Commissioner of Georgia, as to Cash Deposited, etc. 11a

F—Excerpts from Petition of Edward L. Stoddard, Deputy Receiver of Preferred Insurance Company, etc. 13a

G—Excerpts from Order of Fulton Superior Court in the Case of Bentley, Insurance Commissioner of Georgia v. Preferred Insurance Company, etc.—May 23, 1967 ..... 16a

H—Order of Superior Court Modifying Order of May 23, 1967 ..... 18a

I—Excerpts from Enumeration of Errors, etc., in Order of May 23, 1967 and Order of Modification of July 7, 1967 ..... 19a

J—Excerpts from Ancillary Receiver's Report and Recommendations 23a

K—Order Directing Filing of Ancillary Receiver's Report, etc. 26a

L—Objections to Final Order of Court Approval, etc. 28a

M—Petition of Edward J. Stoddard, Deputy Domiciliary Receiver 34a

N—Order Denying Foregoing Petition of Edward J. Stoddard, Deputy Domiciliary Receiver 36a

O—Overruling Objections of Edward J. Stoddard, Deputy Domiciliary Receiver 37a

P—Excerpts from Notice of Appeal of Preferred Insurance Company, etc. 38a

PAGE

Q—Excerpts from Enumeration of Errors of Appellant, Preferred Insurance Company, etc. 40a

R—Excerpts from Transcript of Hearing of October 4, 1968..... 43a

S—Order Staying Remittitur..... 47a

T—Excerpts from Constitution of United States 49a

U—Excerpts from Insurance Law of Georgia..... 50a

V—Excerpts from Chapter 78 of Act No. 218 of Public Acts of Michigan of 1956 Relating to Liquidation and Receivership, etc..... 61a

W—Excerpts from Insurance Law of State of Georgia 71a

X—Excerpts from Workmen's Compensation Law of State of Georgia..... 72a

Cases Cited

Ace Grain Co. v. Rhode Island Insurance Co., 107 F. Supp. 80, aff'd, 199 F. 2d 758 (C. A. 2)..... 11, 17

Bank of U. S. v. Braverman, 181 N. E. 50, 259 N. Y. 65, 82 A. L. R. 658..... 16

Blake v. McClung, 172 U. S. 239..... 15, 16

Bohlinger, etc. v. Ward & Co., 113 Atl. 2d 38, 34 N. J. Sup. Ct. 583, aff'd, 120 Atl. 2d 1, 20 N. J. 331 16

Brooks-Pruitt Tire Co. v. Brooks & Zucker Tire Co., 16 S. E. 2d 423, 192 Ga. 644..... 16

Carver v. Carver, 34 S. E. 2d 509, 199 Ga. 352..... 11

PAGE

Claxton v. Claxton, 107 S. E. 2d 320, 214 Ga. 715 ... 11

Columbia, etc. v. Ross, etc., 25 P. 2d 911, 145 Ore. 96 ... 12

Giannone v. U. S. Steel Corporation, 238 F. 2d 544 ... 11

Hammond Pure Ice & Coal Co. v. Heitman, 47 N. E. 2d 309, 221 Ind. 352 ... 16

O'Malley v. Hawkins, 194 N. E. 168, 207 Ind. 589 ... 18

O'Malley v. Wilson, 185 S. E. 109, 182 Ga. 97 ... 13, 18

Pink v. Title Guarantee & Trust Co., 8 N. E. 2d 321, 274 N. Y. 167 ... 16

Preferred Insurance Company v. Bentley, 223 Ga. 735, 157 S. E. 2d 737 ... 6, 9

Relfe v. Rundle, 103 U. S. 222 ... 14

State of Indiana ex rel. Anderson v. Brand, 303 U. S. 95, 82 L. Ed. 685 ... 13

State of Louisiana v. The Preferred Accident Insurance Company of N. Y., 149 So. 2d 632 (La.) ... 11, 17

Thacher, etc. v. Baldwin, 283 F. 2d 857 (C. A. 7) ... 18

Wolcott v. Pierre, 188 N. E. 596, 100 Ind. 16 ... 16

United States Constitution Cited

Article I, Section 10, Clause 1 ... 2, 3, 13, 15, 18

Article IV, Section 1 ... 2, 13

Section 2, Clause 1 ... 3

Fourteenth Amendment ... 3, 15, 16

PAGE

Statutes Cited

Georgia Uniform Insurers Liquidation Act 2-4, 8-10, 10fn, 17

Ch. 56-14, Secs. 1401-1410 ..... 3, 9, 10, 10fn

Secs. 56-310, 114-606 ..... 3, 4

Sec. 56-1401 (9) (11) 5, 14, 15

Sec. 56-1403 ..... 14, 15

Sec. 56-1403 (3) 14

Sec. 56-1411 15

Sec. 56-1412 4

pp. 289, Ch. 54-14 ..... 7, 9

p. 509 9

Michigan Uniform Insurers Liquidation Act 8, 11, 12

Ch. 78, Secs. 500.7836-500.7868, Act No. 218 ..... 3, 13

28 U.S.C.:

Sec. 1251(1) 2

Other Authorities Cited

31A, C. J. S.:

p. 766, Sec. 299 12

29 N. Y. Jurisprudence:

367 17

Wigmore on Evidence (3rd Ed.):

Sec. 2590 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No.

PREFERRED INSURANCE COMPANY, Grand Rapids, Michigan, a Michigan corporation (in Liquidation, RUSSELL E. VAN HOOSER, Insurance Commissioner of the State of Michigan and Domiciliary Receiver),

Petitioner,

vs.

JAMES L. BENTLEY, Insurance Commissioner of Georgia, and STATE BOARD OF WORKMEN'S COMPENSATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia entered in the above case on February 20, 1969.

Opinions Below

The opinions of the Court below were filed February 20, 1969 and October 20, 1967, respectively, and are re-

ported in 166 S. E. (2d) 340 and 223 Ga. 735, 157 S. E. (2d) 737, respectively. Motions in each for rehearing were denied (App. A, pp. 1a-6a).

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1251(1). The Judgment of the Supreme Court of Georgia was entered February 20, 1969 and rehearing denied March 6, 1969. Petitioner was given until June 4, 1969 by order of said Court to file this petition for a writ of certiorari (App. S, p. 47a).

Questions Presented

1. Did not the disregard by the Georgia court of the judicial admission by the Insurance Commissioner of Georgia that an act, similar in substance and effect to the Georgia Uniform Insurers Liquidation Act, was in force in the State of Michigan, violate Article IV, Section 1 of the Constitution of the United States which requires that full faith and credit be given to the public acts and judgments of other states?

2. Did not the refusal by the Georgia court to transfer the Special Deposits of $50,000 to secure Workmen's Compensation claims and $10,000 to secure Livestock Insurance claims, respectively, to the Domiciliary Receiver, in the absence of any Workmen's Compensation and Livestock claims against them, accompanied by a direction tht they be distributed as general assets to Georgia claims, impair the obligations of the contracts involved and violate Article I, Section 10 of the Constitution of the United States?

3. Did not the Georgia court's direction that such Special Deposits be distributed among Georgia claimants,

notwithstanding they were not in the limited classes, or either of them, for which such Special Deposits were made, deprive all other claimants and creditors in the domiciliary and other states of their right to participate in the distribution of said moneys, and deprive them of their property without due process of law, in violation of the XIV Amendment of the Constitution of the United States?

4. Did not the judgment of the Georgia court deny to the citizens of the domiciliary and states other than Georgia, the privileges and equal rights to which they are entitled under Article IV, Section 2, Clause 1 of the Constitution of the United States?

Constitutional Provisions and Statutes Involved

Article I, Section 10, Clause 1, Article IV, Sections 1 and 2, Clause 1 and Amendment XIV of the Constitution of the United States.

Uniform Insurers Liquidation Act of Georgia and Michigan, respectively, set forth in Ch. 56-14, Secs. 1401-1410 incl., Georgia Code Annotated, and Secs. 500.7836-500.7868 incl. of Ch. 78 of Act No. 218, Public Acts of Michigan 1956; Secs. 56-310 and 114-606, Georgia Code Annotated.

Their text is set forth in the Appendix at pp. 49a-72a.

Statement of the Case

The Insurance Commissioner of Georgia and the Chairman of the State Board of Workmen's Compensation, by verified petition, requested the Superior Court of Georgia, Fulton County, to appoint the Insurance Commissioner, Ancillary Receiver of the Preferred Insurance Company, which they alleged was "a corporation domi-

ciled in Michigan, which state is a reciprocal state within the meaning of the Uniform Insurers Liquidation Act" (App. C, p. 7a).

The application was made (it was alleged) under the provisions of Chapter 56-14 of the Georgia Code Annotated, the Company had been placed in liquidation because of insolvency in the domiciliary jurisdiction on January 31, 1964 and the Michigan Insurance Commissioner appointed receiver with authority to proceed to liquidate the assets and wind up its affairs. Petitioners further stated that the Company had been admitted to do business within the State of Georgia beginning in 1952 and made deposits of various securities as a condition thereof; that it had incurred certain debts and obligations which had not been discharged and "some of which are of the class secured by the deposits made with the State of Georgia"; and that the Court had jurisdiction pursuant to the provisions of Section 56-1412 of the Georgia Code Annotated (App. C, pp. 7a-9a).

The petition was granted by order made April 6, 1964 appointing the Insurance Commissioner of Georgia, Ancillary Receiver in his official capacity as such. It directed him to take possession of the securities deposited with the State Treasurer and all other assets, and to hold such assets until further order of the Court (App. D, p. 10a).

On January 26, 1967 the Ancillary Receiver filed a petition setting forth the securities deposited with the State Treasurer totaling $80,000, stated that he had taken possession of them in accordance with the order of April 6, 1964, and that the Domiciliary Receiver had made a demand on him for them in a letter dated December 23, 1966, a copy of which was attached. He further stated that the bar date for the filing of claims was long past due, that he had received claims from some thirty-seven

(37) Georgia claimants "*none of which are workmen's compensation claims*" (stress added), and that said claims far exceed the deposits of $80,000 above referred to. He asserted that under the statutes as he construed them, particularly Section 56-310 of the Georgia Code Annotated, the deposits were for the benefit of Georgia claimants but that he was in doubt as to the remaining $50,000 made under Section 114-606, Georgia Code Annotated, and he needed a direction from the Court (App. E, pp. 11a-12a).

The Domiciliary Receiver in his answer stated that the $20,000 deposit of July 16, 1952, in accordance with Section 56-310, Georgia Code Annotated, was for the protection of policyholders and others entitled to the proceeds of policies issued in the State of Georgia; that the $10,000 deposit of July 28, 1960 was a Special Deposit for Livestock insurance and was for the benefit of a limited class; that the $50,000 deposit of February 21, 1961, pursuant to the Georgia Workmen's Compensation Insurance Law, was for the benefit of injured employees of insured employers, and was made for the benefit of a limited class of persons; and that it was a Special Deposit and so designated by Section 56-1401, par. 11, Georgia Code Annotated (App. F, pp. 13a-15a).

He further stated that no claims had been filed against the Company, either in the domiciliary proceeding in Michigan or the ancillary proceeding in Georgia by anyone having workmen's compensation or livestock claims, and prayed for an order that said Ancillary Receiver be ordered to forthwith transfer to the Domiciliary Receiver the Special Deposits of $50,000 and $10,000 (App. F, p. 15a).

The Court denied the Domiciliary Receiver's request by order made May 23, 1967. In referring to the workmen's compensation deposit, he held:

> "There was no dispute about the fact that this deposit is primarily for the benefit of workmen's compensation claimants in Georgia. However, the record disclosed that there are no such claims. The issue to be now resolved is whether since there are no workmen's compensation claimants, the balance of the fund remains in special deposit for the benefit of all Georgia claimants or does it lose its status as a special deposit and consequently is properly payable over to the Michigan domiciliary receiver."

He then ruled therein that the entire $80,000 held as deposits was payable to Georgia claimants without distinction, and the remaining balance, if any (none, see *infra*), was payable to the Michigan Domiciliary Receiver (App. G, pp. 16a-17a).

The Domiciliary Receiver moved to modify the order because of a statement in the recital. The motion was granted by order on July 7, 1967, which stated that the determination as to the effect of all deposits, was not modified or changed (App. H, p. 18a).

The Domiciliary Receiver appealed from the order as modified to the Supreme Court of Georgia, and in his enumeration of errors, among other things, stated that the action of the Court below, in effect, impaired the obligations of the contracts arising from the making of the special deposits and the statutes of Georgia affecting them, pursuant to which they were made (App. I, pp. 19a-22a).

The Supreme Court of Georgia affirmed the order below as so modified and denied a motion for a rehearing. In the opinion reported in *Preferred Insurance Company* v. *Bentley*, 223 Ga. 785, 157 S. E. (2d) 737, Grice, J., writing for the Court, stated that the only provision in the

Georgia law for transferring deposits to the Domiciliary Receiver of the Company was in the Uniform Insurers Liquidation Act and that *there was no evidence* that Michigan is a reciprocal state and, therefore, entitled to the benefit of that Act; and that the deposits were not restricted or limited and could be distributed under general equitable principles (App. B, p. 6a).

The Ancilliary Receiver then made a report to the trial court, stated that he had been appointed Ancilliary Receiver in Georgia on April 6, 1964 pursuant to the *Uniform Insurers Liquidation Act,* Georgia Laws 1960, pp. 289 *et seq.,* Ch. 54-14, Georgia Code Annotated, and had taken possession of the deposits made with the State Treasurer, which at the date of his report amounted to $81,651.16, in addition to $2,857.12 due from an agent of the Company in Georgia. He set forth the claims filed and his recommendations as to allowances, and the expenses incurred. He opined that all of the assets and funds available in the ancilliary receivership, namely, the $81,651.16 and the $2,857.12 above referred to, would be expended in the payment of claims for losses insured against and the expenses of administration. He requested a hearing to consider the allowance of such claims and other matters (App. J, pp. 23a-25a).

The Court, after a hearing, directed that the Ancillary Receiver submit to the Court on or before July 15, 1968 a final report, and "that all parties including the Domiciliary Receiver shall have seven (7) days after the approval by the Court of the Ancillary Receiver's final report to file any and all objections to said report and in no event shall the Ancilliary Receiver make any disbursements" of the funds in his possession until the time for objections shall have expired (App. K, pp. 26a-27a).

The Domiciliary Receiver filed objections to such report within the specified time, on July 17, 1968 wherein, among other things, he stated that the disposition of the funds proposed by the Ancilliary Receiver, if approved by the Court, would do irreparable harm and injury to others, and deprive them of their property rights (App. L, pp. 28a-33a).

He also, moved the Court to compel the Ancillary Receiver to turn over to him the $2,857.12, balance obtained from a former agent of the Company, which the Ancillary Receiver had collected. It was denied (App. M, pp. 34a-35a).

On October 4, 1968, the Court held a hearing on the objections to the Ancillary Receiver's Final Report filed by the Domiciliary Receiver. The Domiciliary Receiver thereat offered in evidence a certified copy of the Uniform Insurers Liquidation Act of Michigan which was objected to on various grounds. All such objections were overruled except the ground of irrelevancy, and it was excluded on that ground alone (Transcript of Hearing, App. R, pp. 43a-46a). The Court overruled all the objections to the report by order made the same day (App. O, pp. 37a).

The appeal of the Domiciliary Receiver to the Supreme Court of Georgia was directed to the order of October 4, 1968 overruling his objections, and a companion order made the same day which denied his motion to require the Deputy Ancilliary Receiver to turn over to him $2,857.12 obtained from a former agent of the Company (App. N, p. 36a).

One of the errors enumerated in such appeal was the failure and refusal to give full faith and credit to Chapter 78 of Act No. 218 of the Public Acts of Michigan, viz., the Uniform Insurers Liquidation Act (App. Q, pp. 40a-42a).

In the opinion of the Supreme Court of Georgia, affirming the judgment, written for the Court by Grice, J., who had written the earlier opinion reported in *Preferred Insurance Company* v. *Bentley*, 223 Ga. 735, 157 S. E. (2d) 737, he quoted the language affirming the trial court's judgment that all deposits were for the benefit of Georgia claimants, and that the only provision in Georgia law for transferring deposits made by a foreign insurance company to the Domiciliary Receiver, was contained in the Uniform Insurers Liquidation Act of Georgia, Laws 1960, pp. 289, 509, *et seq.*, Chapter 56-14; Code Annotated, Chapter 56-14, and "*there was no evidence that Michigan is a reciprocal state and, therefore, entitled to the benefit of that act*"; and further stated that three of the enumerations of error raised were issues predicated upon the Uniform Insurers Liquidation Act of Georgia, which they (the Court) had held in the prior appearance, 223 Ga. 735, "was not involved here". Finally, the Court held "that ruling established the law of the case adversely to the contentions of the appellant Domiciliary Receiver on these issues. Therefore, these enumerations are without merit." The motion for a rehearing was denied. (Stress added.) (App. A, pp. 1a-5a).

Reasons for Granting the Writ

I.

The Georgia Supreme Court, in its first decision (App. B, p. 6a), held that the Michigan Uniform Insurers Liquidation Act had not been proven, in that there was "no evidence that Michigan is a reciprocal state", and in the second, herein sought to be reviewed (App. A, pp. 1a-

5a), said that the law of the case and could not be considered.*

It is respectfully submitted that no such evidence was necessary and the Court erred thereby.

The Georgia Insurance Commissioner in his verified petition to the Superior Court of Georgia, Fulton County, for his appointment as Ancillary Receiver, stated that Preferred Insurance Company was domiciled in Michigan "which state is a reciprocal state within the meaning of the Uniform Insurers Liquidation Act" (App. C, p. 7a).

The *Uniform Insurers Liquidation Act* of Georgia is contained in Section 56-1401 to Section 56-1410, Georgia Code, and so designated (App. U, pp. 50a-60a, 59a). Section 56-1401 entitled "Definition of terms used in Chapter" defines (6) "Domiciliary state" as "the state in which an insurer is incorporated or organized". It defines a "reciprocal state" as follows:

> "'(8) 'Reciprocal state' means any state other than this State in which in substance and effect the provisions of this Chapter are in force * * *"

---

* The Court's statement that the Georgia Uniform Insurers Liquidation Act was not involved here, is unclear and does not square with facts. The petition of the Georgia Insurance Commissioner for ancillary receivership stated that it was brought "under the provisions of Chapter 56-14 of the Georgia Code Annotated" (the Uniform Insurers Liquidation Act), and referred thereto as the basis for treating Michigan as "a reciprocal state" (App. C, p. 7a). In his Report and Recomendations made April 5, 1968, he again averred that he was acting "in accordance with the Uniform Insurers Liquidation Act". (App. J, p. 25a) The refusal of the Georgia Supreme Court to take cognizance thereof is incomprehensible.

Thus, the Georgia Insurance Commissioner asserted as a fact that Michigan had enacted the Uniform Insurers Liquidation Act, for it otherwise could not be a "reciprocal state".

> *State of Louisiana* v. *The Preferred Accident Insurance Company of N. Y. (La.),* 149 So. (2d) 632, 635;
>
> *Ace Grain Co.* v. *Rhode Island Insurance Co.,* 107 F. Supp. 80, aff'd (C. A. 2), 199 F. (2d) 758.

The assertion of the fact was a judicial admission which required no proof and could not be disputed.

> "The question here is to be distinguished from what the writers call 'judicial admissions' which are admissible in pleadings, stipulations, etc., and which do not have to be proven in the same litigation."
>
> *Giannone* v. *U. S. Steel Corporation,* 238 F. (2d) 544, 547.

The Supreme Court of Georgia has itself enunciated this principle. It said:

> "The allegations of the plaintiff's petition which are solemn admissions in judicio * * * affirmatively show * * *."
>
> *Claxton* v. *Claxton,* 107 S. E. (2d 320, 324, 214 Ga. 715.

And, again, it held that facts positively alleged were constructive admissions by the party making them and *need not be proven by other evidence.*

> *Carver* v. *Carver,* 34 S. E. (2d) 309, 199 Ga. 352.

Elsewhere, the rule has been stated as follows:

> "The vital feature of a judicial admission is universally conceded to be it conclusiveness upon the party making it, i.e., the prohibition of any further dispute of the fact by him, and of any use of evidence to disprove and contradict it * * *."
>
> *Wigmore on Evidence*, 3rd Ed., Sec. 2590.

Such judicial admission was binding on the Georgia courts.

> *Columbia, etc.* v. *Ross, etc.*, 25 P. (2d) 911, 917, 145 Ore. 96;
> Vol. 31A, *C.J.S.*, Sec. 299, p. 766.

The error thus made in the Georgia Supreme Court's first decision was reiterated in the judgment sought here to be reviewed, wherein it referred to and quoted its previous decision and reasserted the statement there made that the Uniform Insurers Liquidation Act of Michigan had not been proven, adding that was the law of the case,* and affirming the order of the Court below to distribute the Special Deposits as general assets to Georgia creditors (App. A, pp. 1a-5a).

The effect was to seize the assets of the Company in Georgia and apply them in satisfaction of the claims of citizens of Georgia regardless of the nature of their claims. This, it is respectfully submitted, was a clear vio-

---

* Between the first decision and the judgment sought here to be reviewed, in a hearing in the trial court on October 4, 1968, the Domiciliary Receiver had offered to prove the statute. Such proof was rejected as not relevant. (App. R, pp. 45a-46a) Thus the Court not only held that he didn't prove it, but prevented him from proving it.

lation of Article IV, Section 1 of the Constitution of the United States which requires that full faith and credit be given to the public acts and judgments of other states when not in conflict with its own laws, and the Supreme Court of Georgia, itself had so held.

O'Malley v. *Wilson*, 185 S. E. 109, 116, 182 Ga. 97.

II.

The disregard of the conditions and statutes under which the deposits were admittedly made, constituted an impairment of the contracts made between the Company and the State of Georgia, in violation of Article I, Section 10 of the Constitution of the United States.

The deposit of $50,000 made pursuant to Section 114-606 of the Georgia Code was conditioned thereby for the payment of claims under Workmen's Compensation policies issued by the Company. It constituted a contract between the Company and the State for the benefit of Workmen's Compensation claims in Georgia. The deposit of $10,000 for the security of Livestock insurance claimants similarly resulted in a contract between the Company and the State of Georgia for the benefit of that class.

> *State of Indiana ex rel. Anderson* v. *Brand*, 303 U. S. 95, 104, 82 L. Ed. 685.

Absent claims in those classes and the ceasing of the Company to do business in the State of Georgia required that those Special Deposits be returned to the Company or its successor. Such were the terms and conditions of each contract and their crystal clear implication. Such was the equally clear purport of the trusts created thereby.

The Company having been placed in liquidation, the Insurance Commissioner of Michigan, Domiciliary Receiver of the Company, as statutory receiver and successor to the Company was vested with title to its assets and the right to such funds.

Sec. 56-1403 (3), *Georgia Code Annotated;*
Secs. 7836-7868, Chap. 78, Act. No. 218, *Public Acts of Michigan;*
Relfe v. *Rundle,* 103 U. S. 222, 224.

He was, moreover, expressly authorized and empowered to have transferred to him such deposits under the provisions of Section 56-1401 (9) and (11) and Section 56-1403, Georgia Code Annotated (App. U, pp. 51a, 52a, 54a-55a).

Section 56-1401 (9) defines "general assets" and *excludes* therefrom moneys or bonds "deposited * * * for the security or benefit of specified persons or a limited class or classes of persons". Sub-paragraph (11) thereof defines "Special Deposit Claim" as one secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets."

Section 56-1403 (3), George Code vests title by operation of law to all assets of a delinquent insurer in the Domiciliary Receiver of a reciprocal state, and required the Ancillary Receiver to transfer to such Domiciliary Receiver all such special deposits, subject only to the payment of the claims of the limited class or classes such special deposits were given to secure.

The Workmen's Compensation Deposit of $50,000 and Livestock Insurance deposit of $10,000 were Special Deposits for the limited class or classes of persons each covered. As such they were trust funds specifically held for the exclusive benefit of those persons.

Blake v. *McClung*, 172 U. S. 239, 257;
Sec. 56-1403, *Georgia Code Annotated.*

The Georgia court erred in refusing to order their transfer to the Domiciliary Receiver in the absence of claims against them by persons in the limited classes covered and in ordering that they be distributed under general equity principles to Georgia claimants (App. B, p. 6a) despite the provisions of Section 56-1411 of the Georgia Uniform Liquidation Act which provides that

> "(3) This Act (Uniform Insurers Liquidation Act) shall be so interpreted and construed as to effectuate the general purpose of the laws of those states which enact it. *To the extent that its provisions when applicable, conflict with other laws or other portions of this Chapter, the provisions of this Act shall control.* (Acts 1960, pp. 289, Sec. 516)". (Stress added.)

The judgment of the Georgia Supreme Court, it is respectfully submitted, impaired the contracts inherent in the Special Deposits above described and violated Article I, Section 10, of the Constitution of the United States.

III.

The commingling of the Special Deposits of $50,000 and $10,000, respectively, with the general deposit of $20,000 and directing that they be used to pay generally the claims of Georgia creditors, violates the XIV Amendment. It deprived other creditors of their property without due process of law.

As shown, *supra*, the Special Deposits of $50,000 and $10,000, respectively, in respect to which there were no Georgia claims of the classes to which they were limited,

were required to be transferred to the Domiciliary Receiver and applied for the benefit of all creditors as general assets. Such creditors, regardless of their residence, had a property right in the proceeds thereof and the right to share in the distribution.

For upon an adjudication of insolvency the rights of general creditors intervene and equity requires equal distribution of the assets among such general creditors and that no creditor enjoy any advantage not expressly conferred by statute.

Blake v. *McClung, supra,* p. 254;
Wolcott v. *Pierre,* 188 N. E. 596, 598, 100 Ind. 16;
Hammond Pure Ice & Coal Co. v. *Heitman,* 47 N. E. (2d) 309, 312, 314, 221 Ind. 352;
Bohlinger, etc. v. *Ward & Co.,* 113 Atl. (2d) 38, 43, 34 N. J. Sup. Ct. 583, aff'd 120 Atl. (2d) 1, 20 N. J. 331;
Bank of U. S. v. *Braverman,* 181 N. E. 50, 52, 259 N. Y. 65, 82 A. L. R. 658;
Pink v. *Title Guarantee & Trust Co.,* 8 N. E. (2d) 321, 322-325, 274 N. Y. 167;
Brooks-Pruitt Tire Co. v. *Brooks & Zucker Tire Co.,* 16 S. E. (2d) 423, 425, 192 Ga. 644.

The retention of such proceeds by the Ancillary Receiver for the benefit of Georgia creditors gave them advantages and accorded them preferences not expressly conferred by statute, and deprived all other creditors of their property without due process of law in violation of Amendment XIV of the Constitution.

IV.

The Uniform Insurers Liquidation Act is the foundation and cornerstone of a movement to prevent the very act which the judgment of the Supreme Court of Georgia has sanctioned herein.

Adopted by some 31 states, it stemmed from a desire to prevent attempts of local creditors to seize the assets within the state of a foreign insurer for whom a receiver had been appointed. It was purposed to assure equal treatment to all creditors of an insolvent insurer so that no creditor would be allowed to obtain an advantage over other creditors similarly situated.

Ace Grain Co. v. *Rhode Island Ins. Co., supra,* pp. 82-3.
29 N. Y. Jurisprudence 367.

The Act deals with the particular matters peculiar to the forced liquidation and rehabilitation of insurance companies having assets in two or more states, involving, among other things, special deposits and agents' balances in non-domiciliary states, preferred claims, policy claims and other obligations arising in several states. The problems arising therefrom present formidable difficulties when liquidation or rehabilitation becomes necessary. The Uniform Insurers Liquidation Act was designed to facilitate delinquency proceedings by eradicating these difficulties and ensuring equal treatment for all creditors. It does not favor residents or non-residents in the states in which it applies and that was its very intention.

State of Louisiana v. *Preferred Accident Insurance Company of New York, supra,* p. 640, citing 46 A. L. R. (2d) 1186.

The havoc created by the disregard of the Act by the Supreme Court of Georgia may well serve to destroy it

and encourage other states to similarly disregard the rights of citizens of other states accorded them by the Uniform Insurers Liquidation Act and preserved for them by Article IV, Section 2, Clause 1 of the Constitution of the United States.

The violence done thereby to rights of citizens of the domiciliary and other states is even more marked in view of the decision of the *Supreme Court of Georgia* long before the enactment (and force) of the Uniform Insurers Liquidation Act when it upheld the right of the domiciliary receiver of an insolvent insurance company domiciled in Missouri to the transfer of the assets of the company in Georgia, in the absence of a suggestion that he would not give to Georgia creditors the same rights given to creditors in the domiciliary state.

O'Malley v. *Wilson, supra,* p. 116.

To the same effect:

Thacher, etc. v. *Baldwin* (C. A. 7), 283 F. (2d) 857, 862;

O'Malley v. *Hawkins,* 194 N. E. 168, 176, 207 Ind. 589.

CONCLUSION

For the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be granted in this case.

Respectfully submitted,

ALFRED C. BENNETT,
IRVIN WALDMAN,
EDWARD J. STODDARD,
Attorneys for Petitioner.

IRVIN WALDMAN, New York City
Of Counsel.

APPENDIX A

Opinion of Supreme Court of Georgia in *Preferred Insurance Company* v. *Bentley, Commissioner, et al.*

GRICE, *Justice*. Two rulings made in an insurance company receivership comprise this appeal. One is the overruling of objections to an ancillary receiver's final report, and the other is the denial of a motion that he turn over to the domiciliary receiver funds received from a former agent of the company.

These rulings grew out of the appointment of James L. Bentley, as Insurance Commissioner of Georgia, as ancillary receiver of the Preferred Insurance Company, a Michigan corporation for which a domicillary receiver had previously been appointed by a court of that state. Subsequent events which are relevant here are those which follow.

The ancillary receiver, joined by the State Board of Workmen's Compensation, petitioned the Superior Court of Fulton County for instructions as to the disposition of certain deposits which had been made by the insurance company in order to do business in Georgia. The petition recited that as such receiver Bentley had taken charge of these deposits as assets for administration here but that the domicillary receiver had demanded that they be delivered to him for administration in Michigan. The petition also alleged that 37 Georgia claims had been filed to the funds on hand.

We ruled in Preferred Insurance Company v. Bentley, 223 Ga. 735 (157 S. E. 2d 737), as follows: "We must affirm the trial court's judgment that deposits made with

this state by a Michigan insurance company, now in receivership, be held for the benefit of all Georgia claimants, and the balance of such deposits, if any, after all such claims have been liquidated, be paid to the domiciliary receiver.

"The only provision in Georgia law for transferring deposits made with this state by a foreign insurance company to the domiciliary receiver of the company is in the Uniform Insurers Liquidation Act (Ga. L. 1960, pp. 289, 509 et seq., Ch. 56-14; *Code Ann. Ch.* 56-14), and there was no evidence that Michigan is a reciprocal state and therefore entitled to the benefit of that Act . . ."

Thereafter the trial court passed an order prescribing the time and place for presentation, proof and allowance of claims against the deposits "and against any other assets of . . . [the insurance company] that are in this State." The trial court later ordered the ancillary receiver to file his report with the court setting forth all claims filed with him, the amount thereof, and his recommendations as to the allowance and amount of each claim to be allowed; provided for service of such report on all interested parties; ordered that all parties file any objections to the allowance of the claims or the amount thereof within a specified time; and set a date for a hearing on "the matter of . . . [such] report, objections thereto and the procedure to be followed in the proper disposition of controverted issues."

The ancillary receiver's report with recommendations was duly filed. Several claimants filed objections to it, but the domiciliary receiver did not.

Upon the hearing thus provided for, the ancillary receiver's report with recommendations was received in

court, and the objections made to it were considered. It was apparent that the Georgia claims exceeded the assets on hand. The trial court entered an order amending the report in specified particulars and disposing of all the objections. It then ordered the ancillary receiver to submit a final report with drafts attached by a named date, and provided that all parties have a specified time, after approval by the court of the final report, to file objections thereto.

The final report, incorporating the amendments ordered by the court, covering all claims allowed and disallowed, and providing for a final accounting, was duly filed. It was approved by the trial court.

The domicillary receiver filed objections to the final report. Upon a hearing they were overruled.

Upon the hearing on objections to the ancillary receiver's final report, the trial court also denied the motion of the domicillary receiver that funds received from a former agent of the insurance company be turned over to such receiver.

The appeal is from the overruling of the objections to the ancillary receiver's final report and the denial of the motion for the agency funds.

1. Three of the enumerations of error raise issues predicated upon the Uniform Insurers Liquidation Act (Ga. L. 1960, pp. 289, 309 et seq., ch. 56-14; Code Ann. §§56-1401-56-1410), which we held in the prior appearance (223 Ga. 735, supra) was not involved here. That ruling established the law of the case adversely to the contentions of the appellant domicillary receiver on these issues. Therefore these enumerations are without merit.

2. The enumeration complaining of the overruling of the domicillary receiver's objections to the ancillary receiver's final report is not valid.

Such objections were filed too late. The court's approval of this report did not determine any issue that had not already been considered and adjudicated by it upon the hearing on objections to the report and recommendations filed by the ancillary receiver approximately six months previously. The domicillary receiver made no objections to that report although a specified time had been allowed for objections after the filing of the report and a hearing was had to consider the objections made. The domicillary receiver can not stand silently while the court determines the issues made by other objectors and then come in and object for the first time after the court has ordered a final report with drafts attached for payment of the claims and expenses of administration as determined at such prior hearing. By waiting until this stage of the proceeding, the domicillary receiver has waived any objections.

3. The remaining enumeration, that the trial court erred in denying the domicillary receiver's motion that the ancillary receiver turn over to him certain funds received from a former agent is likewise without merit.

This motion also came too late. From what appears, the domicillary receiver had knowledge of these funds for almost two years before he filed the motion to obtain them. Furthermore, the first report of the ancillary receiver showed these funds, along with the deposits, as assets of the company to be distributed to Georgia claimants and, as discussed in division 2, the domicillary receiver made no objection to that report. Not until more

than two months after the filing of the ancillary receiver's final report, which reflected determinations made at the hearing on his first report, did the domiciliary receiver seek to obtain these funds.

For the foregoing reasons, we find no error.

Judgment affirmed. All the Justices concur.

Decided February 20, 1969.

(Rehearing denied—March 6, 1969.)

APPENDIX B

Opinion of Supreme Court of Georgia (October 20, 1967)

IN THE
SUPREME COURT OF GEORGIA

PREFERRED INSURANCE COMPANY v. BENTLEY, Commissioner, et al.

GRICE, Justice. We must affirm the trial court's judgment that the deposits made with this state by a Michigan insurance company, now in receivership, be held for the benefit of all Georgia claimants, and the balance of such deposits, if any, after all such claims have been liquidated, be paid to the domiciliary receiver.

The only provision in Georgia law for transferring deposits made with this state by a foreign insurance company to the domiciliary receiver of the company is in the Uniform Insurers Liquidation Act (Ga. L. 1960, pp. 289, 509 et seq., Ch. 56-14; *Code Ann. Ch.* 56-14), and there was no evidence that Michigan is a reciprocal state and therefore entitled to the benefit of that Act. Furthermore, there was no evidence that the deposits were of the types required to be administered under Ga. L. 1960, pp. 289, 493, Ch. 56-11 (*Code Ann. Ch.* 56-11), rather than under Ga. L. 1960, pp. 289, 318 (*Code Ann.* §56-310) or under general equitable principles.

Judgment affirmed. All the Justices concur.

ARGUED OCTOBER 10, 1967—DECIDED OCTOBER 20, 1967—
REHEARING DENIED NOVEMBER 9, 1967.

APPENDIX C

Excerpts from Petition of James L. Bentley, Insurance Commissioner of the State of Georgia, to be Appointed Ancilliary Receiver, etc.

GEORGIA, FULTON COUNTY:

TO THE SUPERIOR COURT OF SAID COUNTY:

JAMES L. BENTLEY, acting in his official capacity as Insurance Commissioner of the State of Georgia and under the provisions of Chapter 56-14 of the Georgia Code Annotated, hereinafter called petitioner, together with the State Board of Workmen's Compensation, brings this petition against Preferred Insurance Company, a Michigan corporation, and respectfully shows the following:

1.

Petitioner is the duly elected, qualified and acting Comptroller General of Georgia and by virtue of said office is the Insurance Commissioner of Georgia.

2.

That on July 16, 1962, Preferred Insurance Company, a corporation domiciled in Michigan, which state is a reciprocal state within the meaning of Uniform Insurers Liquidation Act, was admitted for the purpose of soliciting and writing insurance upon risks located in this State.

3.

That in order to secure proper licenses to write insurance business in the State of Georgia, and in order to qualify for said licenses, Preferred Insurance Company

has deposited with the Treasurer of the State of Georgia, United States Treasury Bonds having a par value of eighty thousand ($80,000) dollars, which security remains in the custody, possession, and control of the State of Georgia.

4.

That on May 15, 1963, Sherwood Colburn, Commissioner of Insurance of the State of Michigan, was appointed Temporary Conservator of said Preferred Insurance Company by Order of Judge Marvin J. Salmon, Circuit Judge, Circuit Court for the County of Ingham, State of Michigan.

* * *

6.

That efforts to rehabilitate Preferred Insurance Company have been unsuccessful and by Order of Judge Marvin J. Salmon signed on January 31, 1964, Allen L. Mayerson, Commissioner of Insurance of the State of Michigan, was appointed Receiver of said company with authority to proceed to liquidate its assets and wind up its affairs.

7.

That while Preferred Insurance Company wrote insurance in Georgia, * * * some of which are of the class secured by the deposits made with the Treasurer of the State of Georgia referred to in Paragraph 3 of this petition.

* * *

10.

Petitioner, James L. Bentley, as Insurance Commissioner of Georgia, is the proper person to be appointed

as Ancillary Receiver under the provisions of Section 56-1419 of the Code of Georgia and should be so appointed.

11.

This Court has jurisdiction of this cause pursuant to the provisions of Section 56-1412 of the Georgia Code Annotated * * *.

WHEREFORE, petitioner prays:

* * *

(c) That James L. Bentley, as Insurance Commissioner of Georgia, be appointed Ancillary Receiver to take charge of all assets of Preferred Insurance Company in Georgia and to administer such assets as may be directed by this Court.

* * *

(Verified February 19, 1964 by James L. Bentley, Insurance Commissioner of Georgia and M. Roscoe Lowery, Chairman State Board of Workmen's Compensation.)

APPENDIX D

Excerpts from Order Appointing James L. Bentley as Ancillary Receiver of Preferred Insurance Company, etc.

JAMES L. BENTLEY, Insurance Commissioner of Georgia

v.

PREFERRED INSURANCE COMPANY

No. B-3745

Fulton Superior Court

ORDER

* * *

ORDERED, ADJUDGED, and DECREED that James L. Bentley in his official capacity as Insurance Commissioner of Georgia be, and he is hereby appointed Ancillary Receiver of all the assets of Preferred Insurance Company located within the bounds of the State of Georgia including, but not limited to, any and all securities which said company may have on deposit with the Treasurer of Georgia, with the following powers and instructions, to wit:

1. Said Ancillary Receiver is hereby directed to take and retain possession of the securities deposited by Preferred Insurance Company with the State Treasurer, under the provisions of Section 56-310 of the Code of Georgia and such other assets of said company as may be found in this State, and to preserve and * * *

* * *

This 6th day of April, 1964.

CLAUDE D. SHAW
Judge
Fulton Superior Court

APPENDIX E

Excerpts from Petition of James L. Bentley, Insurance Commissioner of Georgia, as to Cash Deposited, etc.

JAMES L. BENTLEY, as Insurance Commissioner of Georgia, and STATE BOARD OF WORKMEN'S COMPENSATION

vs.

PREFERRED INSURANCE COMPANY,
Grand Rapids, Michigan, a Michigan Corporation

Case No. B3745

Fulton Superior Court

Now comes JAMES L. BENTLEY, as Insurance Commissioner of Georgia, Ancillary Receiver for Preferred Insurance Company, and shows the Court the following facts:

1.

That on and after July 16, 1952, Preferred Insurance Company, a corporation domiciled in the State of Michigan, qualified to conduct an insurance business in the State of Georgia; and that in order to qualify to conduct said business in the State of Georgia, said Corporation has deposited with the Treasurer of the State of Georgia securities having a par value of Eighty Thousand ($80,000.00) Dollars, as follows, to-wit:

* * *

Appendix E

3.

That this petitioner, as per the order of April 6, 1964, has retained possession of the securities hereinabove set out in Paragraph One (1) hereof. That on December 23, 1966 Edward J. Stoddard, Special Deputy Commissioner and Deputy Receiver of the State of Michigan, Liquidation Division of the Insurance Bureau, made a demand on this petitioner with respect to the securities hereinabove referred to, said demand being in the form of a letter dated December 23, 1966, copy of which is attached hereto, marked Exhibit "A", and made a part hereof.

4.

That the bar date for the filing of claims to the Anciliary Receiver is long past, and this petitioner, after fully complying with the provision of the order with respect to notice, has received claims from some thirty-seven (37) Georgia claimants (none of which are workmen's compensation claims), and the total of said claims far exceeds the deposits of $80,000.00 hereinabove referred to.

5.

That the statutes make it clear that $30,000.00 of said deposits (made under Section 56-310 of Georgia Code Annotated) are for the benefits of Georgia claimants, and that as to the remaining $50,000.00 deposits (made under Section 114-606, Georgia Code Annotated), your petitioner is in doubt and needs direction from the Court.

* * *

APPENDIX F

Excerpts from Petition of Edward L. Stoddard, Deputy Receiver of Preferred Insurance Company, etc.

JAMES L. BENTLEY, as Insurance Commissioner of Georgia, and STATE BOARD OF WORKMEN'S COMPENSATION

vs.

PREFERRED INSURANCE COMPANY, Grand Rapids, Michigan, a Michigan Corporation

---

Case No. B 3745

Fulton Superior Court

Now comes Edward J. Stoddard, duly appointed Deputy Receiver for Preferred Insurance Company (appointed to act in the place and stead of David J. Dykhouse, Insurance Commissioner for the State of Michigan and Receiver for Preferred Insurance Company) and states,

That, James L. Bentley, as Ancillary Receiver for Preferred Insurance Company in the State of Gorgia, by A. R. Barksdale, his Deputy Receiver, has filed in the Superior Court for Fulton County, State of Georgia * * * his petition for instructions and directions as to the disposition of the securities deposited by Preferred Insurance Company with the State of Georgia pursuant to statutory requirements of the Insurance Commissioner of Georgia, and

Appendix F

That, on July 16th, 1952, a deposit was made with the State of Georgia, by Preferred Insurance Company for the purpose of doing business in said State, in the sum of $20,000 in accordance with Section 56-310, Georgia Code Annotated and that such deposit was for the protection of policyholders and others entitled to the proceeds of policies issued in the State of Georgia, and

That, as limited by said Section 56-310 the deposit required could not be less than $10,000 minimum and $25,000 maximum, and

That, on July 28th, 1960 a deposit was made as a Special Deposit for the purpose and permission by the Georgia Department of Insurance to write Livestock business and that the deposit as such was for the benefit of a limited class, and

That, on February 23rd, 1961 a $50,000 deposit was made pursuant to the Georgia law on Workmen's Compensation Insurance for the benefit of injured employees whose employers were insured by Preferred Insurance Company and that this deposit, as made for benefit of a limited class of persons was as regards claims made on said deposit, a Special Deposit and so named by Section 56-1401, paragraph 11 of the Georgia Code Annotated, and

* * *

That, as the deposit of February 23rd, 1961 was made for the purpose of writing Workmen's Compensation Insurance in the State of Georgia and that the deposit was made for claimants in Workmen's Compensation proceedings that such deposit was a Special Deposit and was for a limited class or classes of persons as described by par-

agraph 11 of Section 56-1401 of the Georgia Code Annotated, and

That, the deposit of July 28th, 1960 was made for the purpose of writing Livestock insurance and accordingly was for a limited class or classes of persons and was a Special Deposit as described by said paragraph 11 of Section 56-1401, and

That, there are no claims filed against Preferred Insurance Company either in the domiciliary or ancillary proceedings in the State of Michigan or the State of Georgia by anyone having Workmen's Compensation or Livestock claims, and

* * *

WHEREFORE, Petitioner prays,

That, an order issue directing that the deposit made by Preferred Insurance Company on July 16th, 1952 be retained by the Ancillary Receiver in the State of Georgia as a general deposit for the sole benefit of Georgia claimants and others claiming in the State of Georgia whose claims have been properly filed and as may be allowed in the proceedings before this court, and

FURTHER prays for an order directing said Ancillary Receiver to forthwith transfer to the Domiciliary Receiver the Special Deposits of $50,000 and $10,000 respectively in accordance with paragraph 3 of Section 56-1403 of the Georgia Code Annotated, and

* * *

APPENDIX G

Excerpts from Order of Fulton Superior Court in the Case of *Bentley, Insurance Commissioner of Georgia* v. *Preferred Insurance Company, etc.*—May 23, 1967

ORDER

The above captioned matter came on for a hearing on Petitioner's petition for direction; and, an order entered pursuant thereto directed the deputy ancillary receiver to notify by mail all named claimants and parties of interest that they were directed to be and appear before the Presiding Judge of this court to show cause, if any, the interest they might have in the security set forth in the Plaintiff's petition and to show what, if any, reasons they had as to why the prayers of the Petitioner should not be granted, at which time the domiciliary receiver for the State of Michigan appeared in opposition to the ancillary receivers retaining the $50,000.00 Workmen's Compensation deposit made under the provisions of Georgia Code Section 114-606, as well as claimants who claimed an interest in said deposits.

* * *

There was no dispute about the fact that this deposit is primarily for the benefit of Workmen's Compensation claimants in Georgia. However, the record disclosed that there are no such claims. The issue to be now resolved is whether, since there are no Workmen's Compensation claimants, the balance of the fund remains a special deposit for the benefit of any and all Georgia claimants; or, does it lose its status as a special deposit and, consequently, is properly payable over to the Michigan domiciliary receiver.

* * *

Appendix G

After consideration of the matter, the Court has arrived at the conclusion that the entire $80,000.00, held as deposit, be payable to proper Georgia policy claimants, and that the remaining balance, if any, be payable to the Michigan domiciliary receiver;

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that Petitioner be directed, and he hereby is directed, that the deposits made under Section 56-310 of the Georgia Code Annotated, and the $50,000.00 deposit made under Section 114-606 of the Georgia Code Annotated; are to be held as special deposits in Georgia for the benefit of all Georgia claimants with claims properly filed; and, the balance of said assets, if any, be paid to the domiciliary receiver after all such claims in Georgia have been properly and equitably liquidated.

IT IS SO ORDERED.

This 23rd day of May, 1967.

SAM PHILLIPS MCKENZIE, A.J.C.
Judge, Superior Court

APPENDIX H

Order of Superior Court Modifying Order of May 23, 1967

ORDER

The order of this Court dated May 23, 1967, is after hearing modified to the extent that said Order in the language beginning at the bottom of page one which reads "it was agreed by all parties present that there was no real dispute with regard to the remaining $30,000 deposited with the State . . ." may have limited the issues as framed by the pleadings so as to affect the rights of any party litigant. The order itself determining the effect of all deposits is not modified or changed.

This 7 day of July, 1967.

SAM PHILLIPS MCKENZIE, A.J.C.
Judge, S. C.

Minutes 510, Page 440

APPENDIX I

Excerpts from Enumeration of Errors, etc., in Order of May 23, 1967 and Order of Modification of July 7, 1967

IN THE
SUPREME COURT OF GEORGIA
NUMBER 24336

PREFERRED INSURANCE COMPANY, Grand Rapids, Michigan, a Michigan corporation,

Appellant,

vs.

JAMES L. BENTLEY, as Insurance Commissioner of Georgia and STATE BOARD OF WORKMEN'S COMPENSATION,

Appellee.

FROM THE FULTON SUPERIOR COURT
CASE NUMBER D-3745

ENUMERATION OF ERRORS

Comes now the Appellant and files this its Enumeration of Errors as follows:

The court below erred in its order dated May 23, 1967, which order was modified July 7, 1967, in the following particulars:

(1) The court below erred in holding that the $10,000.00 deposit made by Appellant to transact a livestock insurance business in Georgia be for the use of Georgia claim-

ants only, where for the most part, the present claimants in Georgia are presenting claims for loss arising out of automobile and liability accidents, especially when Section 56-1102 of the Code of Georgia Annotated (Georgia Laws, 1960, pp. 289, 494) especially state that such deposit should be held for the protection of all of Appellant's policyholders or others entitled to the proceeds of policies within the United States.

(2) The court below erred in holding that the workmen's compensation deposit, made by Appellant in the sum of $50,000.00 as required by Section 114-606 of the Code of Georgia Annotated (Georgia Laws, 1920, p. 205; Georgia Laws, 1933, pp. 182, 183) could be used for the general claimants and creditors in Georgia only, where the purpose of the deposit was for a specific class of claimants "—conditioned for the payment of Compensation losses—" and where, after finding no compensation claims, ordered that the deposit be treated under Section 56-310 of the Code of Georgia Annotated (Georgia Laws, 1960, pp. 289, 318) for the benefit of Georgia claimants only, notwithstanding, the stated purpose of the deposit.

(3) The court below erred in providing and granting preferential treatment for a class of claimants—Georgian's only—to the injury and loss of all general claimants who have an equity in the assets of Appellant, an insolvent insurer.

(4) The court below erred by failing to apply the law of Georgia under Chapter 56-14 (Georgia Laws, 1960, pp. 289, 509, et seq.) known as the Uniform Insurer's Liquidation Act.

(5) The court below erred in not requiring the Ancillary Receiver to perform and act as required by Section 56-1403, paragraph (3) of the Code of Georgia Annotated (Georgia Laws, 1960, pp. 209, 513).

(6) The court below erred in treating the special deposits of Appellant as deposits made for all claimants in Georgia only when, Section 56-310 of the Code of Georgia Annotated (Georgia Laws, 1960, pp. 289, 318) provides for a deposit of "—not less than $10,000 nor more than $25,000.00—" and where, as defined by paragraph (11) of Section 56-1401 of the Code of Georgia Annotated (Georgia Laws, 1960, pp. 289, 509) "Special deposit claims" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons but not including any general assets;" and under paragraph (9) of said referred to section, it is stated "Assets held in trust and assets held on deposit for the security or benefit of all policyholders, or all policyholders and creditors in the United States shall be deemed general assets;".

(7) The court below erred when, after finding the deposits of $10,000.00 and $50,000.00 to be 'special deposits' it disregarded the law provided in Section 114-606 of the Code of Georgia Annotated (Georgia Laws, 1920, p. 205; Georgia Laws, 1933, pp. 182, 183); Section 56-1102 of the Code of Georgia Annotated (Georgia Laws, 1960, pp. 289, 494); and Chapter 56-14 of the Code of Georgia Annotated (Georgia Laws, 1960, pp. 289, 509, et seq. "Uniform Insurer's Liquidation Act").

(8) The court below erred in failing to find that the $50,000.00 deposit made pursuant to Section 114-606 of the

Appendix I

Code of Georgia Annotated (Georgia Laws, 1920, p. 205; Georgia Laws, 1933, pp. 182, 183) was made for a specific purpose and, with no claims attaching to such deposit, was an asset which could not be transferred to the Georgia Ancillary Receiver to the detriment of all other claimants and creditors of Appellant and thus lose its identity as a single purpose or trust deposit. In this regard the court below further erred in failing to find that said $50,000.00 deposit was one that the Domiciliary Receiver was entitled to, for the use and benefit of all creditors of Appellant.

* * *

APPENDIX J

Excerpts from Ancillary Receiver's Report and Recommendations

JAMES L. BENTLEY, as Insurance Commissioner of Georgia, and State Board of Workmen's Compensation

vs.

PREFERRED INSURANCE COMPANY, Grand Rapids, Michigan, a Michigan Corporation

CASE NO. B 3745

FULTON SUPERIOR COURT

ANCILLARY RECEIVER'S REPORT AND RECOMMENDATIONS:

* * *

2.

That pursuant to a prior order of this Court, the Ancillary Receiver of Preferred Insurance Company took possession of the assets situated within this State, as set forth in Petitioner's report of January 27, 1967, same being heretofore converted into time certificates with the Bank of Rockdale, Conyers, Georgia, and Petitioner having on hand at the date of this report the sum of $81,651.16.

There is also on deposit in checking account in the Bank of Rockdale the sum of $2,857.12, which said sum was derived from the collection of account owed to Preferred Insurance Company by an agent doing business in the State of Georgia.

* * *

Appendix J

7.

Petitioner shows that the final date for filing claims for intervening in this proceeding has long since passed, and that by virtue of order of this Court heretofore entered in this case, all parties interested in the assets of Preferred Insurance Company who have not filed their claims, or intervened in this proceedings are forever barred from doing so.

8.

Petitioner shows that the following claims for losses insured against have been filed in this ancillary proceeding, and further recommends allowance or disallowance on the claims as follows:

* * *

9.

Petitioner shows that the following claims for losses other than losses insured against have been filed in this ancillary proceeding:

* * *

11.

Petitioner further shows that claims have been presented as follows within the time allowed by law by the following insurance agents and agencies claiming the following sums for return premium claims:

* * *

12.

* * * Your Petitioner further shows that, in his opinion, all of the assets and funds available in this ancillary pro-

ceeding will be expended and the payment of claims for losses insured against and the expenses of administration.

* * *

14.

That in accordance with the Uniform Insurors Liquidation Act, your Ancillary Receiver fixes compensation on account of his Special Deputy Insurance Commissioner and Attorney at $5,000.00, * * *

* * *

15.

* * * That in accordance with the Uniform Insurors Liquidation Act, your Ancillary Receiver will probably award additional compensation to his Special Deputy Commissioner and Attorney for services rendered subsequent to this report in this proceeding, and if this is done, it will be done by a supplemental report prior to the date set for hearing on this report.

* * *

WHEREFORE, PETITIONER PRAYS:

1. That this, his report and recommendations be sanctioned, allowed and ordered filed.

* * *

(Verified by James L. Bentley Insurance Commissioner and Ancillary Receiver April 5, 1968.)

APPENDIX K

Order Directing Filing of Ancillary Receiver's Report, etc.

JAMES L. BENTLEY, as Insurance Commissioner of Georgia and State Board of Workmen's Compensation

v.

PREFERRED INSURANCE COMPANY

CASE NO. B-3745

FULTON SUPERIOR COURT

ORDER

The above and foregoing matter of the Ancillary Receiver's Report and Recommendation coming on for a hearing in accordance with the prior order of the Court and the objections and recommendations of the Receiver having been heard and considered, it is ordered:

1.

That the Ancillary Receiver prepare and submit to the Court on or before July 15, 1968 a final report having attached thereto drafts for the payment of claims in accordance with the final report.

* * *

4.

It is ordered that the Ancillary Receiver shall prepare the final return and make disbursements of funds in ac-

cordance with Georgia Code Annotated Section 56-1428, subject to the Court's approval. * * *

5.

It is further ordered that all parties including the Domiciliary Receiver shall have 7 days after the approval by the Court of the Ancillary Receiver's final report to file any and all objections to said final report, and in no event shall the Ancillary Receiver make any disbursement of balance of funds on time deposit as herein provided until the time for objections shall have expired.

6.

The Ancillary Receiver is hereby ordered to serve a copy of his final report upon all parties who have filed pleadings or made appearance herein.

It is so ordered, this 31st day of May, 1968.

SAM PHILLIPS MCKENZIE
Judge, Superior Court, A. J. C.

APPENDIX L

Objections to Final Order of Court Approval, etc.

IN THE
SUPERIOR COURT OF FULTON COUNTY

* * *

OBJECTIONS OF DEPUTY DOMICILIARY RECEIVER TO FINAL ORDER OF COURT APPROVING ANCILLARY RECEIVER'S FINAL REPORT

Now comes Edward J. Stoddard, Domiciliary Deputy Receiver for Preferred Insurance Company and files this, his objection to the Final Report of the Ancillary Deputy Receiver and the allowance or payment of any claims as proposed by the Ancillary Deputy Receiver in his Final Report * * *

* * *

RELATION

The Superior Court of Fulton County, State of Georgia, took jurisdiction of this case by virtue of a petition filed by the Attorney General * * *. The petition as filed was verified by Commissioner Bentley and the Honorable M. Roscoe Lowery, Chairman, State Board of Workmen's Compensation. * * *

* * *

In the petition it was stated at paragraph 2,

> "That on July 16, 1952, Preferred Insurance Company, a corporation domiciled in Michigan, which state is a reciprocal state within the meaning of Uniform Insurance Liquidation Act, was admitted

> for the purpose of soliciting and writing insurance upon risks located in this state"

and paragraph 7 of the petition stated,

> "That while Preferred Insurance Company wrote Insurance in Georgia said company incurred certain debts and obligations to persons, firms and corporations residing in this state exceeding ten (10) in number which have not been discharged in any manner, some of which are of the class secured by the deposits made with the Treasurer of the State of Georgia referred to in paragraph 3 of this petition." (Our underlining [sic].)

The Domiciliary Receiver did not deny nor controvert any of the facts alleged and, accordingly, the facts as plead were admitted.

Later on, the Deputy Ancillary Receiver, A. R. Barksdale, duly appointed to act for and in the stead of the statutory Receiver, Commissioner of Insurance James L. Bentley, filed a petition asking for instructions relative to deposits made by Preferred Insurance Company as an incident to doing business in the State of Georgia, that totaled $80,000.00.

* * *

The Deputy Domiciliary Receiver, acting for and in the stead of the statutory Receiver, the Commissioner of Insurance of the State of Michigan, appeared for the purpose of claiming assets to which the Domiciliary Receiver was entitled as provided by the Uniform Insurers Liquidation Act of Georgia, being subsections (2) through (13) inclusive of Section 56-1401 through Section 56-1410,

both inclusive of Chapter 56-14 of George Insurance Law Annotated.

* * *

It is to be noted here that the Workmen's Compensation deposit of $50,000.00 was made under the Workmen's Compensation Laws and Section 114-606 that reads:

* * *

> "* * * Every insurance company doing a workmen's compensation business in this State shall furnish a bond payable to the State in the sum of $50,000.00 * * * conditioned for the payment of compensation losses on polices issued by such insurance company upon risks located in this State. * * * In lieu of such bond a deposit of the same amount may be made with the Treasurer of the State in the form of other security satisfactory to the Insurance Commissioner. (Acts 1920, p. 205; 1933, pp. 182, 183.)"

This is the manifest reason why the State Board of Workmen's Compensation, who were clothed with the right to bring suit upon the deposit as made, were named as a party plaintiff.

Following the hearing before Judge McKenzie and submission of briefs for his consideration, an Order issued ". . . that petitioner be directed and he is hereby directed that the deposits made under Section 56-310 of the Georgia Code Annotated and the $50,000.00 deposit made under Section 114-606 of the Georgia Code Annotated are to be held as special deposits in Georgia for the benefit of all Georgia claimants with claims properly filed; and the balance of assets, if any, be paid to the Domiciliary Re-

ceiver after all such claims in Georgia have been properly and equitably liquidated."

* * *

The deposit was a special deposit and it is plainly stated that it was for a limited class of person i.e. Workmen's Compensation claimants. There were no Workmen's Compensation claims to discharge and if Section 56-1401 (Paragraph 9) is followed at all, its dictates are clear. The deposit with no claims on it becomes an excess and, as such, becomes part of "general assets."

* * *

* * * he required that a court reporter take notes when the Petition for Instructions was presented by the parties to the Court. But no evidence of any kind was taken, and from the inception of the proceedings no evidence was introduced so that the record, when certified for appeal to the Supreme Court of Georgia, was completely devoid of any evidence in support of the facts alleged in the various proceedings. There was, indeed, in the record the petition for ancillary proceedings heretofore referred to, whose allegations were not denied nor controverted. * * *

* * *

There are several thousand claimants with claims proved and properly allowed who have an interest in the outcome of this matter, and one claimant in particular, being Allstate Insurance Company, a corporation doing business in Georgia, who, having filed its claim in Michigan and had it disallowed, have taken an appeal. The

case on appeal is awaiting final determination by the Michigan Courts. Should this claimant be successful in making manifest its claim, it would be entitled to share with all other Georgia claimants on a pro-rata basis of the Georgia deposit, because as provided by Section 56-1405, the Georgia Insurance Law Annotated, it is stated,

> "In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer who reside within this state may file claims either with the Ancillary Receiver, if any appointed in this state, or with the Domiciliary Receiver."

The Ancillary Deputy Receiver has knowledge of the Allstate claim but has made no provision for the claim in his final report. Many claimants will suffer irreparable harm if the assets in which they have on interest are distributed as now contemplated.

* * *

OBJECTIONS AND REQUEST FOR HEARING

* * *

(8) That the Ancillary Deputy Receiver proposes to use money, that is rightfully, by the law of Georgia, the property of the Domiciliary Receiver.

(9) That the Ancillary Deputy Receiver does not rightfully or legally hold for distribution to Georgia claimants the sum necessary to pay the claims as listed in his Final Report for the reason that a large part of the money proposed for use is a trust fund and clearly identified

as such when he took possession of it and as it now is in his hands.

(10) That the Final Report of the Ancillary Deputy Receiver is incomplete in that he has knowledge of other claimants for which no provision has been made in his Final Report.

(11) That approval of the Final Report will do irreparable harm and injury to others and deprive persons of their property rights.

APPENDIX M

Petition of Edward J. Stoddard, Deputy Domiciliary Receiver

Comes now Edward J. Stoddard, acting in his official capacity as Deputy Domiciliary Receiver * * * brings this petition against the Honorable A. R. Barksdale, Deputy Ancillary Receiver for Preferred Insurance Company * * *

—1—

Said Deputy Ancillary Receiver Barksdale has received from a former agent of the Preferred Insurance Company the sum of $2,857.12, being payment made by the agent for a balance due and owing Preferred Insurance Company on his account.

* * *

—3—

It is not now known by your petitioner what additional amounts have been received by or paid to Deputy Ancillary Receiver Barksdale and are being held by him.

—4—

The sum of $2,857.12 and other such amounts received by said Deputy Ancillary Receiver Barksdale from agents and others are by Section 56-1403, Paragraph 3, of Chapter 56-14 of Georgia Code Annotated, herewith given, the property of the Domiciliary Receiver:

* * *

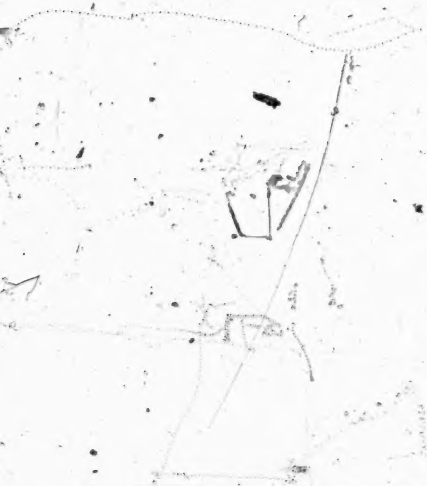
Demand has been made upon said Deputy Ancillary Receiver Barksdale to no avail.

Appendix M

WHEREFORE, petitioner prays that said Deputy Ancillar
Receiver Barksdale be required to comply with the dic
tates of the law and turn over to the Domiciliary Receive
the property, now held by said Deputy Ancillary Receiv
er Barksdale, forthwith.

This 24th day of September, 1968.

* * *



APPENDIX N

Order Denying Foregoing Petition of Edward J. Stoddard, Deputy Domiciliary Receiver

ORDER

The above motion is after hearing, hereby denied.
This 4th day of October, 1968.

SAM PHILLIPS MCKENZIE
Judge, S. C., A. J. C.

APPENDIX O

Overruling Objections of Edward J. Stoddard, Deputy Domiciliary Receiver

The above Objections are, after hearing, hereby overruled.

This 4th day of October, 1968.

SAM PHILLIPS MCKENZIE
Judge, S. C., A. J. C.

APPENDIX P

Excerpts from Notice of Appeal of Preferred Insurance Company, etc.

IN THE
SUPREME COURT OF GEORGIA
NUMBER 24336

PREFERRED INSURANCE COMPANY, Grand Rapids, Michigan, a Michigan Corporation,

Appellant

vs.

JAMES L. BENTLEY, as Insurance Commissioner of Georgia and STATE BOARD OF WORKMEN'S COMPENSATION,

Appellees

FROM THE FULTON SUPERIOR COURT
CASE NO. B-3745

NOTICE OF APPEAL

Notice is hereby given that PREFERRED INSURANCE COMPANY, the defendant above-named, hereby appeals to the Supreme Court of the State of Georgia from an Order entered by the Honorable Sam Phillips McKenzie, Judge, Superior Court, Atlanta Judicial Circuit, said Order dated the 4th day of October, 1968, which said Order overruled the Objections filed by Preferred Insurance Company to the Final Order of the Court approving the Ancillary

Receiver's Final Report, said Order being a Final Judgment.

Notice is hereby further given that Preferred Insurance Company, the defendant above named, hereby appeals to the Supreme Court of the State of Georgia from an Order entered by the Honorable Sam Phillips McKenzie, Judge, Superior Court, Atlanta Judicial Circuit, said Order dated the 4th day of October, 1968, which said Order denied the Motion made by the defendant, Preferred Insurance Company, to require the Deputy Ancillary Receiver to turn over to the defendant the sum of Two Thousand Eight Hundred Fifty-Seven and 12/100 ($2,857.12) Dollars, as contended in said Motion to be required under the law of Georgia, said Order being a Final Judgment as to this issue.

APPENDIX Q

Excerpts from Enumeration of Errors of Appellant, Preferred Insurance Company, etc.

IN THE
SUPREME COURT OF GEORGIA
CASE NO. 25016

PREFERRED INSURANCE COMPANY, Grand Rapids, Michigan, a Michigan Corporation,

Appellant,

vs.

JAMES L. BENTLEY, as Insurance Commissioner of Georgia and STATE BOARD OF WORKMEN'S COMPENSATION,

Appellees.

FROM THE FULTON SUPERIOR COURT
CASE NO. B-3745

ENUMERATION OF ERRORS

Comes now the Appellant and files this its Enumeration of Errors, as follows:

1.

The Court below erred in failing to follow the provisions of Georgia Laws 1960, pp. 289, 508-518 (Georgia Code Annotated, Sections 56-1401—56-1413, "Uniform Insurers Liquidation Act") under which the Ancillary Re-

ceivership was established and under which the Superior Court of Fulton County ordered the Plaintiff, James L. Bentley, as Insurance Commissioner of Georgia, to take charge of all assets of the Defendant located in Georgia and which is the sole and exclusive method of liquidating an insurer (Georgia Laws 1960, pp. 289, 517. Georgia Code Annotated 56-1412 (4)).

2.

The Court below erred in overruling the Objections of the Deputy Domiciliary Receiver (Appellant) to the Final Order of the Fulton Superior Court approving the Ancillary Receiver's Final Report, which Order had the effect of a final decision adverse to the Appellant in the Court below.

3.

The Court below erred in refusing to admit in evidence at the hearing in Fulton Superior Court on October 4, 1968, Appellant's Exhibit 1, which is a certified copy of Chapter 78 of Act No. 218 of the Public Acts of Michigan, "Uniform Insurers Liquidation Act" of the State of Michigan, which disallowance in evidence was a failure to give full faith and credit to the laws of a sister state.

4.

The Court below erred in failing to give effect to and follow Georgia Laws 1960, pp. 289, 508 et seq., Georgia Code Annotated Sections 56-1401 through 56-1413 "Uniform Insurers Liquidation Act", but to the contrary conducted the proceedings under general equitable principles contrary to and in derogation of Georgia Laws 1960, p. 289, 517 (Georgia Code Annotated, Section 56-1412 (4)).

Appendix Q

5.

The Court below erred in overruling the Motion of the Deputy Domiciliary Receiver for payment of certain agency funds to the Domiciliary Receiver by the Deputy Ancillary Receiver, which Order overruling said Motion was entered on October 4, 1968, and was a final adjudication to these funds by the Court below.

* * *

APPENDIX R

Excerpts from Transcript of Hearing of October 4, 1968

IN THE
SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JAMES L. BENTLEY, as Insurance Commissioner of Georgia, and STATE BOARD OF WORKMEN'S COMPENSATION

Movant,

v.

PREFERRED INSURANCE COMPANY, Grand Rapids, Michigan, a Michigan corporation,

Respondent.

CIVIL ACTION
NUMBER B-3745
TRANSCRIPT OF PROCEEDINGS

Hearing before the Hon. Sam Phillips McKenzie, Judge, Fulton Superior Court, in the above-styled case, 814 Fulton County Courthouse, Atlanta, Georgia, heard October 4, 1968.

Appearances of Counsel:

On behalf of the Deputy Receiver of Preferred Insurance Company:

EDWARD J. STODDARD, ESQ.
THOMAS S. BENTLEY, ESQ.
JOHN E. TALMADGE, ESQ.

Appendix R

On behalf of the Dimiciliary Receiver:

A. R. BARKSDALE, ESQ.

On behalf of the Intervenors:

HENRY M. HATCHER, JR., ESQ.
CLAUD M. HICKS, ESQ.
WALTER G. COOPER, ESQ.

(p. 3)

* * * "Mr. Stoddard: If it please the Court, there are two matters here, a petition that the Dimiciliary Receiver has filed asking that the Deputy Ancillary Receiver comply with the Uniform Insurers Act, Particularly Section 56-1403. Now, that is one matter. The other matter has to do with the objections filed in connection with the final report made by the Ancillary Deputy Receiver. * * *"

* * *

(p. 4)

* * * "A. R. BARKSDALE being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Stoddard) Will you state your name, please, sir? A. A. R. Barksdale.

Q. Are you the Ancillary Deputy Receiver for Preferred Insurance Company in the State of Georgia? A. Yes, sir."

* * *

Appendix R

(p. 12)

* * * Q. Did you read that petition? A. I'm sure I did.

Q. Did that tell you what law you were operating under? A. I set out in my answer that I was operating under the Uniform Insurers Liquidation Act, Georgia Laws, 1960.

Q. Is that Chapter 56-14? A. 56-14, I set that out in the first paragraph of my report, which is verified by Mr. Bentley on April 5th, 1968."

* * *

(p. 27)

* * * "Mr. Stoddard: It may be helpful, Your Honor, to have a copy of the Uniform Act of Michigan in this Court's file, and I have a certified copy of this certification and I would like to file it instanter as an exhibit."

* * *

(p. 54)

* * * Mr. Bentley: I think we might make a formal tender of this exhibit, I don't know if it was done.

The Court: The statute?

Mr. Bentley: Yes, the Michigan statute."

* * *

Mr. Bentley: Yes, sir. May I go ahead and offer Exhibit I for the Domiciliary Receiver, which is the certified copy of the—exhibit will speak for itself. We will offer that into evidence."

* * *

Appendix R

(p. 57)

* * * "Mr. Stoddard: Would it help if I testify, I am familiar with the law, I know the law."

* * *

"The Court: All right, Gentlemen, I will overrule the objection to Exhibit Number 1 as to its form, I will sustain the objection as to its relevancy at this stage of the proceedings."*

* * *

(p. 69, p. 70)

* * * "Mr. Stoddard: I think it has been a little over a half hour since we started talking about this and the whole premise is wrong, calling this petition, this order I have asked for a claim. I am not claiming anything. This is something that I am pointing out to the Court that is vested in the Domiciliary Receiver as a matter of law. I am simply asking for an order of this Court directing the Receiver to comply with the law, and yet all of this talk has been on claims, over a half hour. That's all I have to say."

* * *

---

* The Exhibit is a copy of Section 7800 to 7860 inclusive of Chapter 78 of No. 218 of the Public Acts of Michigan of 1956 relating to liquidation and receivership of domestic and foreign insurance companies containing the Uniform Insurer Liquidation Act and the certificate of the Secretary of State of Michigan. It is printed so far as pertinent in this Appendix with the statutes.

APPENDIX S

Order Staying Remittitur

IN THE
SUPREME COURT OF GEORGIA
CASE NO. 25016

PREFERRED INSURANCE COMPANY, Grand Rapids, Michigan, a Michigan Corporation,

Appellant,

vs.

JAMES L. BENTLEY, as Insurance Commissioner of Georgia and STATE BOARD OF WORKMEN'S COMPENSATION,

Appellees.

ORDER STAYING REMITTITUR

Upon consideration of motion of Appellant's counsel in the above-styled case to stay remittitur, it is hereby

ORDERED, that the remittitur in this case be, and it is hereby, stayed, for a period of ninety days from date of denial of petition for rehearing (petition for rehearing denied March 6, 1969); and it is further

ORDERED, that upon Appellant's filing of petition for writ of certiorari in the United States Supreme Court within said ninety day period to review this Court's judgment in said case, the said stay shall remain in effect pending final determination of the case by the United States Supreme Court; and it is further

Appendix S

ORDERED, that counsel for Appellant be, and he is hereby directed to notify this Court when the petition for writ of certiorari is filed in the United States Supreme Court; or, should counsel decide to abandon seeking further review, counsel is hereby directed to notify this Court of same promptly, so that the stay hereby granted may be terminated and the remittitur send down as provided by law.

This 7th day of March, 1969.

/s/ WILLIAM H. DUCKWORTH
Chief Justice
Supreme Court of Georgia

APPENDIX T

Excerpts from Constitution of United States

ARTICLE I, SECTION 10, CLAUSE 1:

"Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and Silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law Impairing the Obligation of Contracts, or grant any Title of Nobility."

* * *

ARTICLE IV, SECTION 1

"Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

ARTICLE IV, SECTION 2

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

* * *

AMENDMENT XIV, SECTION 1

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX U

Excerpts from Insurance Law of Georgia

CHAPTER 56-14. REHABILITATION AND LIQUIDATION OF INSURERS

* * *

56-1401. *Definitions of terms used in Chapter.*—For the purpose of this Chapter:

(1) "Impairment" or "insolvency." The capital of a stock insurer or the surplus of a mutual or reciprocal insurer, shall be deemed to be impaired and the insurer shall be deemed to be insolvent, when such insurer is not possessed of assets at least equal to all liabilities and required reserve together with its total issued and outstanding capital stock if a stock insurer, or the minimum surplus if a mutual or reciprocal insurer, required by this Title to be maintained for the kind or kinds of insurance it is then authorized to transact;

(2) "Insurer" means any person, firm, corporation, association, or aggregation of persons doing an insurance business and subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization, or conservation by, the Commissioner of this State, or the equivalent insurance supervisory official of another state;

(3) "Delinquency proceedings" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer;

(4) "State" means any state of the United States, and also the District of Columbia, and Puerto Rico;

(5) "Foreign country" means territory not in any state;

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an insurer incorporated or organized in a foreign country, the state in which such insurer, having become authorized to do business in such state, has, at the commencement of delinquency proceedings, the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States; and any such insurer is deemed to be domiciled in such state;

(7) "Ancillary state" means any state other than a domiciliary state;

(8) "Reciprocal state" means any state other than this State in which in substance and effect the provision of this Chapter are in force, including the provisions requiring that the Commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer;

(9) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders, or all policyholders and creditors in the United States, shall be deemed general assets;

(10) "Preferred claim" means any claim with respect to which the law of a state or of the United States accords priority of payment from the general assets of the insurer;

(11) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets;

(12) "Secured claim" means any claim secured by mortgage trust, deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which more than four months prior to the commencement of delinquency proceedings in the state of the insurer's domicile have become liens upon specific assets by reason of judicial process;

(13) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context may require. (Acts 1960, pp. 289, 509.)

56-1402. *Conduct of delinquency procedings against insurers domiciled in this State*—(1) Whenever under the laws of this State a receiver is to be appointed in delinquency proceedings for an insurer domiciled in this State, the court shall appoint the Commissioner as such receiver. The court shall direct the receiver forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

(2) The domiciliary receiver and his successors in office shall be vested by operation of law with the title

to all the property, contracts, and rights of action, and all of the books and records of the insurer wherever located as of the date of entry of the order directing possession to be taken, and he shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are hereinafter prescribed for ancillary receivers appointed in this State as to assets located in this State. The filing or recording of the order directing possession to be taken, or a certified copy thereof, in the office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded. The domiciliary receiver shall be responsible on his official bond for the proper administration of all assets coming into his possession or control. The courts may at any time require an additional bond from him or his deputies if deemed desirable for the protection of the assets.

(3) Upon taking possession of the assets of a delinquent insurer the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by the laws of this State for the purpose of liquidating, rehabilitating, reorganizing, or conserving the affairs of the insurer. In connection, with delinquency proceedings he may appoint one or more special deputy commissioners to act for him, and may employ such counsel, clerks, and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks, or assistants, and all expenses of taking possession of the delinquent insurer and of conducting the delinquency pro-

ceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Within the limits of the duties imposed upon them special deputies shall possess all the powers given to, and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to delinquency proceedings. (Acts. 1960, pp. 289, 511.)

56-1403. *Conduct of delinquency proceedings against insurers not domiciled in this State.*—(1) Whenever under the laws of this State an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this State, the court shall appoint the Commissioner as ancillary receiver. The Commissioner shall file a petition requesting the appointment (a) if he finds that there are sufficient assets of such insurer located in this State to justify the appointment of an ancillary receiver, or (b) if 10 or more persons resident in this State having claims against such insurer filed a petition with the Commissioner requesting the appointment of such ancillary receiver.

(2) If the Commissioner fails to file a petition within 30 days after the appointment of a receiver for such insurer in its domicilary state, any person having a claim insured against by said insurer may file a petition in the superior court of Fulton county for the appointment of the Commissioner as ancillary receiver of the property of such foreign insurer.

(3) The domiciliary receiver of an insurer domiciled in a reciprocal state, shall be vested by operation of law with the title to all of the property, contracts, and rights

of action, and all of the books and records of the insurer located in this State, and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this State. He shall also be entitled to recover the other assets of the insurer located in this State except that upon the appointment of an ancillary receiver in this State, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this State, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets as a receiver of an insurer domiciled in this State. (Acts 1960, pp. 289, 513.)

56-1404. *Filing and proving of claims of nonresidents against delinquent insurers domiciled in this State.*—(1) In a delinquency proceeding begun in this State against an insurer domiciled in this State, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in reciprocal states may either be proved in this State

as provided by law, or, if ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this State as provided in section 56-1405 with respect to ancillary proceedings in this State, the final allowance of such claim by the courts in the ancillary state shall be accepted in this State as conclusive as to its amount, and shall be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state. (Acts 1960, pp. 289, 513.)

56-1405. *Filing and proving of claims of residents against delinquent insurers domiciled in reciprocal states.* —(1) In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer who reside within this State may file claims either with the ancillary receiver, if any, appointed in this State, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in this State may either be proved in the domiciliary state as provided by the law of that state, or, if ancilliary proceedings have been commenced in this state, be proved in those proceedings. In the event that any such claimant elects to prove his claim in this State, he shall file his claim with the ancillary receiver in the manner provided by the law of this State for the proving of claims

against insurers domiciled in this State, and he shall give notice in writing to the receiver in the domiciliary state, either by registered mail or by personal service at least 40 days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver, within 30 days after the giving of such notice, shall give notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this State involving the adjudication of the claim. The final allowance of the claim by the courts of this State shall be accepted as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this State. (Acts 1960, pp. 289, 514.)

56-1406. *Priority of preferred claims.*—(1) In a delinquency poceeding against an insurer domiciled in this State, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this State. All such claims whether owing to residents or nonresidents shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of this State shall be preferred if like claims are preferred by the laws of that state. (Acts 1960, pp. 289, 515.)

Appendix U

56-1407. *Priority of special deposit claims.*—The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other State shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimant may share in the general assets, but such sharing shall be deferred until general creditors and also claimants against each other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit. (Acts 1960, pp. 289, 515.)

56-1408. *Priority of secured claims.*—The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other State may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this Chapter, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state. (Acts 1960, pp. 289, 515.)

Appendix U

56-1409. *Attachment and garnishment of assets.*—During the pendency of delinquency proceedings in this or any reciprocal state no action or proceeding in the nature of an attachment, garnishment, or execution shall be commenced or maintained in the courts of this State against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within four months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void against any rights arising in such delinquency proceeding. (Acts 1960, pp. 289, 516.)

56-1410. Right of domiciliary receiver to sue in this State.—The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this State to recover any assets of such insurer to which he may be entitled under the laws of this State. (Acts 1960, pp. 289, 516.)

Cross-reference.—Receiver as officer of court, see § 55-301.

56-1411. *Uniform Insurers Liquidation Act.*—(1) Subsections (2) through (13), inclusive, of section 56-1401 through section 56-1410, both inclusive of this Chapter constitute and may be referred to as the Uniform Insurers Liquidation Act.

(2) If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Appendix U

(3) This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it. To the extent that its provisions, when applicable, conflict with other laws, or other portions of this Chapter, the provisions of this Act shall control. (Acts 1960, pp. 289, 516.)

* * *

APPENDIX V

Excerpts from Chapter 78 of Act No. 218 of Public Acts of Michigan of 1956 Relating to Liquidation and Receivership, etc.

CHAPTER 78.

LIQUIDATIONS AND RECEIVERSHIPS.

500.7800 *Scope of chapter.* [M.S.A. 24.17800]

Sec. 7800. This chapter shall apply to all domestic and foreign corporations, associations, societies and orders transacting an insurance business under authority of any law of this state, including all corporations, associations, fraternal benefit societies and orders which are subject to examination by the commissioner, or which are doing or attempting to do or representing that they are doing the business of insurance in this state, or which are in process of organization intending to do such business therein, or to become incorporated under any law of this state for the transaction of an insurance business.

* * *

500.7836 *Uniform insurers liquidation act; short title.* [M.S.A. 24.17836]

Sec. 7836. Sections 7836 through 7868 constitute, and may be cited as, the "uniform insurers liquidation act."

500.7837 *Same; definitions.* [M.S.A. 24.17837]

Sec. 7837. *For the purposes of this act:*

(1) "Insurer" means any person, firm, corporation, association, or aggregation of persons doing an insurance

business and subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization, or conservation by, the insurance commissioner of this state, or the equivalent insurance supervisory official of another state.

(2) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer.

(3) "State" means any state of the United States, and also the District of Columbia, Alaska, Hawaii, and Puerto Rico.

(4) "Foreign country" means territory not in any state.

(5) "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an insurer incorporated or organized in a foreign country, the state in which such insurer, having become authorized to do business in such state, has designated as its domiciliary state and/or state of entry into the United States.

(6) "Ancillary state" means any state other than a domiciliary state.

(7) "Reciprocal state" means any state other than this state in which in substance and effect the provisions of this act are in force, including the provisions requiring that the insurance commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer.

(8) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, de-

posited, or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders, or all policyholders and creditors in the United States, shall be deemed general assets.

(9) "Preferred claim" means any claim with respect to which the law of a state or of the United States accords priority of payment from the general assets of the insurer.

(10) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

(11) "Secured claim" means any claim secured by mortgage, trust, deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which more than 4 months prior to the commencement of delinquency proceedings in the state of the insurer's domicile have become liens upon specific assets by reason of judicial process.

(12) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context may require.

500.7838 *Same; domiciliary receivers, powers.* [M.S.A. 24.17838]

Appendix V

Sec. 7838. (1) Whenever under the laws of this state a receiver is to be appointed in delinquency proceedings for an insurer domiciled in this state, the court shall appoint the insurance commissioner as such receiver. The court shall direct the receiver forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

(2) The domiciliary receiver and his successors in office shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer wherever located, as of the date of entry of the order directing possession to be taken, and he shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have as to assets located in their respective states the rights and powers which are hereafter prescribed for ancillary receivers appointed in this state as to assets located in this state. The filing or recording of the order directing possession to be taken, or a certified copy thereof, in the office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded. The domiciliary receiver shall be responsible on his official bond for the proper administration of all assets coming into his possession or control. The court may at any time require an additional bond from him or his deputies if deemed desirable for the protection of the assets.

(3) Upon taking possession of the assets of a delinquent insurer the domiciliary receiver shall, subject to the

direction of the court, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by the laws of this state for the purpose of liquidating, rehabilitating, reorganizing, or conserving the affairs of the insurer. In connection with delinquency proceedings he may appoint 1 or more special deputy commissioners to act for him, and may employ such counsel, clerks, and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks, or assistants and all expenses of taking possession of the delinquent insurer and of conducting the delinquency proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Within the limits of the duties imposed upon them, special deputies shall possess all the powers given to, and in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to delinquency proceedings.

500.7840 *Same; ancillary receivers, powers.* [M.S.A. 24.-17840]

Sec. 7840. (1) Whenever under the laws of this state an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the insurance commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment (a) if he finds that there are sufficient assets of such insurer located in this state to justify the appointment of an ancillary receiver, or (b) if 10 or more persons resident in this state having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

(2) The domiciliary receiver of an insurer domiciled in a reciprocal state, shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer located in this state, and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. He shall also be entitled to recover the other assets of the insurer located in this state except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets, as a receiver of an insurer domiciled in this state.

500.7842 *Same; claims of nonresidents against domestic insurers, filing, proof.* [M.S.A. 24.17842]

Sec. 7842. (1) In a delinquency proceeding begun in this state against an insurer domiciled in this state, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any in their respective states, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in reciprocal states may either (a) be proved in this state as provided by law, or (b), if ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state as provided in section 7844 with respect to ancillary proceedings in this state, the final allowance of such claim by the courts in the ancillary state shall be accepted in this state as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state.

500.7844 *Same; claims of residents against foreign insurers, filing, proof.* [M.S.A. 24.17844]

Sec. 7844. (1) In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer who reside within this state may file claims either with the ancillary receiver, if any, appointed in this state, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceeding.

(2) Controverted claims belonging to claimants residing in this state may either (a) be proved in the domiciliary state as provided by the law of that state, or (b), if ancillary proceedings have been commenced in this state, be proved in those proceedings. In the event that any such claimant elects to prove his claim in this state, he

shall file his claim with the ancillary receiver in the manner provided by the law of this state for the proving of claims against insurers domiciled in this state, and he shall give notice in writing to the receiver in the domiciliary state, either by registered mail or by personal service at least 40 days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver, within 30 days after the giving of such notice, shall give notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this state.

500.7846 *Same; preferred claims, priority.* [M.S.A. 24.-17846]

Sec. 7846. (1) In a delinquency proceeding against an insurer domiciled in this state, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this state. All such claims whether owing to residents or nonresidents shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents

of this state shall be preferred if like claims are preferred by the laws of that state.

500.7848 *Same; special deposit claims, priority.* [M.S.A. 24.17848]

Sec. 7848. The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

500.7850 *Same; secured claims, priority.* [M.S.A. 24.-17850]

Sec. 7850. The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this act, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be

heard, such amount shall be conclusive; otherwise, the amount shall be determined in the delinquency proceedings in the domiciliary state.

500.7854 *Same; attachment, garnishment or execution prohibited.* [M.S.A. 24.17854]

Sec. 7854. During the pendency of delinquency proceedings in this or any reciprocal state no action or proceeding in the nature of an attachment, garnishment, or execution shall be commenced or maintained in the courts of this state against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within 4 months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding.

500.7858 *Same; action by domiciliary receiver of reciprocal state in this state.* [M.S.A. 24.17858]

Sec. 7858. The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of such insurer to which he may be entitled under the laws of this state.

* * *

APPENDIX W

Excerpts from Insurance Law of State of Georgia

* * *

56-310. *Deposit by foreign and alien insurers.*—In addition to the deposit required by section 56-309 each foreign and alien insurer shall deposit with the Treasurer of the State of Georgia securities eligible for the investment of capital funds in an amount not less than $10,000 nor more than $25,000 at the discretion of the Commissioner. This deposit and the deposit required by section 56-309 (2) (a) shall be administered as provided in Chapter 56-11. Deposits under this section shall be held for the protection of the insurer's policyholders in Georgia and others in Georgia entitled to the proceeds of its policies. (Acts 1960, pp. 289, 318.)

* * *

CHAPTER 56-11. ADMINISTRATION OF DEPOSITS

* * *

56-1102. *Purpose of deposits.*—Such deposits shall be held as follows:

(1) When the deposit is required for authority to transact insurance in Georgia, the deposit shall be held for the protection of all the insurer's policyholders or others entitled to the proceeds of policies within the United States; Provided, this shall not apply to a deposit made under section 56-310;

* * *

APPENDIX X

Excerpts from Workmen's Compensation Law of State of Georgia

* * *

114-606. *Knowledge of injury. Bond or deposit of insurer.*—All policies insuring the payment of compensation under this Title, including all contracts of mutual, reciprocal, or inter-insurance, must contain a clause to the effect that as between the employer and the insurer or insurers the notice to or knowledge of the occurrence of the injury on the part of the insured employer shall be deemed notice or knowledge, as the case may be, on the part of the insurer or insurers; that jurisdiction of the insured for the purposes of this Title shall be jurisdiction of the insurer or insurers; and that the insurer or insurers shall in all things be bound by and subject to awards, judgments, or decrees rendered against such insured employer. Every insurance company doing a workmen's compensation business in this State shall furnish a bond payable to the State in the sum of $50,000 with some surety company authorized to transact business in this State as surety, in such form as may be approved by the Insurance Commissioner, conditioned for the payment of compensation losses on policies issued by such insurance company upon risks located in this State. Suit may be brought upon said bond by the State Board of Workmen's Compensation, for the use and benefit of any party or parties at interest. The annual license of such company shall not be issued or renewed until it has filed with the Insurance Commissioner of this State a bond as aforesaid. In lieu of such bond a deposit of the same amount may be made with the Treasurer of the State in the form of other security satisfactory to the Insurance Commissioner. (Acts 1920, p. 205; 1933, pp. 182, 183.)

* * *

LIBRARY
SUPREME COURT, U. S.

FILED
JUL 2 1969
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1969

No. [redacted] 170

PREFERRED INSURANCE COMPANY, Grand Rapids, Michigan, a Michigan corporation (in Liquidation, RUSSELL E. VAN HOOSER, Insurance Commissioner of the State of Michigan and Domiciliary Receiver),

Petitioner,

versus

JAMES L. BENTLEY, Insurance Commissioner of Georgia, and STATE BOARD OF WORKMEN'S COMPENSATION,

Respondents.

RESPONSE OF WILLIE RUTH SIMMONS AND H. B. SIMMONS, CLAIMANTS, TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA.

POOLE, PEARCE and COOPER,
WALTER G. COOPER,
1642 National Bank of Georgia Building,
Atlanta, Georgia 30303,

HATCHER, MEYERSON, OXFORD & IRVIN,
HENRY M. HATCHER, JR.,
320 First Federal Building,
40 Marietta Street, N.W.
Atlanta, Georgia 30303,
Attorneys for Respondents.

TABLE OF CONTENTS.

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
RESPONDENTS' SUPPLEMENTAL STATEMENT OF THE CASE	3
REASONS TO DENY THE WRIT	6
CONCLUSION	8

TABLE OF AUTHORITIES.

Cases:

Bank of Garfield v. Clark, et al., 138 Ga. 798(6), 76 S.E. 95	4
Clark v. Preferred Accident Insurance Company of New York, S.C., 1957, 97 S.E.2d 498	7
Close v. Walker Land Corporation, 1965, 221 Ga. 329, 145 S.E.2d 245	3
Fincher v. Stanley Electric Mfg. Co., 1906, 127 Ga. 362, 56 S.E. 440	4
Fischer v. American United Life Insurance Company, 1941, 314 U.S. 549, 86 L.Ed. 444	7
Garner v. State of La., 1961, 368 U.S. 157, 7 L.Ed.2d 207, 82 S.Ct. 248	6
Greenough v. Tax Assessors of City of Newport, 1947, 331 U.S. 486, 91 L.Ed. 1621, 67 S.Ct. 1400, 172 A.L.R. 329	7
Hulbert v. Chicago, 1906, 202 U.S. 275, 50 L.Ed. 1026, 26 S.Ct. 617	3

TABLE OF AUTHORITIES—(Continued):

	Page
Cases—(Continued):	
King v. West Virginia, 1910, 216 U.S. 92, 54 L.Ed. 396, 30 S.Ct. 225	5
Lloyds Insurance Company of America v. State, Texas, 1936, 98 S.W.2d 259	7
Milk Wagon Drivers Union of Chicago v. Meadowmoor Dairies, 1941, 312 U.S. 287, 85 L.Ed. 836, 61 S.Ct. 552, 132 A.L.R. 1200	7
Musser v. State of Utah, 1948, 333 U.S. 95, 92 L.Ed. 562, 68 S.Ct. 397	7
Pickering v. Board of Education, 1968, 391 U.S. 563, 20 L.Ed.2d 811, 88 S.Ct. 1731	3
Southern Surety Co. of New York, 282 N.Y. 54, 24 N.E. 2d 845, 127 A.L.R. 497	7
State ex rel van Shaick v. Bowen, 131 Ohio St. 310, 2 N.E.2d 824	7
Waters-Pierce Oil Co. v. Texas, Tex., 1909, 29 S.Ct. 220, 212 U.S. 86, 53 L.Ed. 417	6
Statutes:	
28 U.S.C. Sec. 1251 (1)	2
28 U.S.C. Sec. 1257 (3)	6
Georgia Code Section 6-810 (Ga. Laws, 1965, pp. 240, 243)	3
Georgia Code Section 38-403(2)	4
Treatises:	
Annotations, 104 A.L.R. 748-751	7
Couch on Insurance, 2d Ed., 1959, Sec. 22:90, 91	7
53 Corpus Juris 407	7

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1454

PREFERRED INSURANCE COMPANY, Grand Rapids, Michigan, a Michigan corporation (in Liquidation, RUSSELL E. VAN HOOSER, Insurance Commissioner of the State of Michigan and Domiciliary Receiver),

Petitioner,

versus

JAMES L. BENTLEY, Insurance Commissioner of Georgia, and STATE BOARD OF WORKMEN'S COMPENSATION,

Respondents.

RESPONSE OF WILLIE RUTH SIMMONS AND H. B. SIMMONS, CLAIMANTS, TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA.

Now Come Willie Ruth Simmons and H. B. Simmons and respond to the petition for writ of certiorari in the above styled case.

OPINIONS BELOW.

The only opinion of the Court below to which application for certiorari is timely filed is the opinion of

February 20, 1969, cited as 166 S.E.2d 340. The prior opinion of October 20, 1967, (223 Ga. 735, 157 S.E.2d 737) is not before the Court for review.

JURISDICTION.

Petitioner seeks to invoke the jurisdiction of this Court under 28 U.S.C. Sec. 1251 (1) (sic), dealing with "original jurisdiction."

This is a petition for certiorari. Neither original jurisdiction nor grounds therefor appear.

QUESTIONS PRESENTED.

Respondents contend that none of the questions allegedly presented are in fact properly presented nor are they before this Court on this petition.

Each of the questions were necessarily decided adversely to petitioner by the Supreme Court of Georgia in its judgment of October 20, 1967, reported at 223 Ga. 735, 157 S.E.2d 737. This fact more clearly appears from respondents' supplemental statement of the case.

No appeal or petition for certiorari was filed to the judgment of October 20, 1967, and the decision therein is now the law of the case.

None of the constitutional questions allegedly presented were raised in the trial court. See applicant's Objections to Final Order of Court (Petition for Certiorari, Appendix L, p. 28a).* The questions were not raised in the Supreme Court of Georgia. See petitioner's Enumeration of Errors, filed in the Supreme Court of Georgia (Appendix Q, p. 40a).

*Appendices hereafter referred to are also to the Petition for Writ of Certiorari.

Appellate procedure in Georgia requires that all issues on which the appellant relies be set forth in an Enumeration of Errors. Georgia Code Section 6-810 (Ga. Laws, 1965, pp. 240, 243), *Close v. Walker Land Corporation*, 1965, 221 Ga. 329, 145 S.E.2d 245.

Consequently, the alleged constitutional issues presented in this application were not presented to the Supreme Court of Georgia, were not passed on by that Court and will not be considered by this Court. *Pickering v. Board of Education*, 1968, 391 U.S. 563, 20 L.Ed.2d 811, 88 S.Ct. 1731; *Hulbert v. Chicago*, 1906, 202 U.S. 275, 50 L.Ed. 1026, 26 S.Ct. 617.

RESPONDENTS' SUPPLEMENTAL STATEMENT OF THE CASE.

This case was initially before the trial court on the petition of the ancillary receiver for instructions as to the disposition of certain deposits held by him in the amount of Eighty Thousand ($80,000.00) Dollars (Appendix E, p. 11a). The trial court decreed "that the entire $80,000.00, held as deposit, be payable to proper Georgia policy claimants, and that the remaining balance, if any, be payable to the Michigan domiciliary receiver;" (Appendix G, p. 16a).

The Supreme Court of Georgia affirmed the judgment "that the deposits made with this state by a Michigan insurance company, now in receivership, be held for the benefit of all Georgia claimants" on the ground that "there was no evidence that Michigan is a reciprocal state and therefore entitled to the benefit of (the Georgia Uniform Insurers Liquidation Act)." (Appendix B, p. 6a; 223 Ga. 735, 157 S.E.2d 737.)

Under Georgia law, the claimant appellees were not bound by the allegations of the receivership petition, which

they were not called upon to answer. *Fincher v. Stanley Electric Mfg. Co.*, 1906, 127 Ga. 362, 56 S.E. 440; *Bank of Garfield v. Clark, et al.*, 138 Ga. 798(6), 76 S.E. 95; Georgia Code Section 38-403(2).

Following the receipt of the remittitur from the Supreme Court of Georgia, the trial court on January 17, 1968 passed the following order:

> "It is hereby ordered that the time and place for the presentation, proof, and allowance of claims against the deposits made by Preferred Insurance Company in the State of Georgia that are in the amount of Eighty Thousand ($80,000.00) Dollars, and against any other assets of that company that are in this State, shall be on the fifth day of April, 1968, . . ."

On February 9, 1968, the trial court passed its further order, to-wit:

> "IT IS ORDERED that the Ancillary Receiver file his report with the Court setting forth all claims filed with him, the amount thereof, and his recommendations as to the allowance and amount of each claim to be allowed, such report to be filed on or before the 25th day of March, 1968."
>
> "IT IS FURTHER ORDERED that a copy of such report be served on all claimants and all other interested parties, or upon their attorneys, within five days of the filing thereof, and that all parties file such objections as they may have to the allowance of any claims or the amount thereof within fifteen days after service upon him.
>
> "Upon the filing of the foregoing report and the opportunity to all parties to file objections, the case is set for hearing before the undersigned Judge on the 15th day of April, 1968, at 10:00 A.M. on the matter of the Receiver's report, objections thereto and the pro-

cedure to be followed in the proper disposition of controverted issues." (R-270.)

Petitioner has failed to designate these portions of the record in the Supreme Court of Georgia to be sent to this Court but the fact and substance thereof is adequately stated in the opinion of the Court below. (Appendix A, pp. 1a, 2a.)

Petitioner made no attempt to comply with the orders of the court and made his objections for the first time six months after the hearing on objections and the order of the trial court thereon. Petitioner waived his objections not timely filed. (Appendix A, p. 4a.)

The Court below dealing with petitioner's enumerations of error raising issues predicated upon the Uniform Insurers Liquidation Act held in the judgment now sought to be reviewed (February 20, 1969) that the ruling of the initial appeal (October 20, 1967) "established the law of the case adversely to the contentions of the appellant domiciliary receiver on these issues." (Appendix A, p. 3a.)

The construction and effect of a prior decree of the state court on subsequent litigation is a matter of state procedure and not reviewable in this Court. *King v. West Virginia*, 1910, 216 U.S. 92, 54 L.Ed. 396, 30 S.Ct. 225.

Reference is made in petitioner's statement to the failure of the trial court to receive in evidence a copy of the Michigan statute on the Uniform Insurers Liquidation Act. Noteworthy is the fact that, although litigation over the deposits in Georgia had been in progress for over two years, the Michigan statute was offered in evidence for the first time on October 4, 1968, approximately six months after the trial court had passed on all objections to the receiver's report. (Appendix R, pp. 45a, 46a.) The judgment of the trial court

that the Michigan statute was not relevant to any matter before the court on October 4, 1968, was upheld by the Supreme Court of Georgia in holding that "The court's approval of this (final) report (on October 4, 1968) did not determine any issue that had not already been considered and adjudicated by it upon the hearing on objections to the report and recommendations filed by the ancillary receiver approximately six months previously." (Appendix A, p. 4a.)

REASONS TO DENY THE WRIT.

> "The jurisdiction of this court to review the proceedings of the state courts, as we have had frequent occasion to declare, is not that of a general reviewing court in error, but is limited to the specific instances of denials of federal rights, whether those pertaining to the constitutionality of federal or state statutes, or to certain rights, immunities, and privileges of federal origin specially set up in the state court, and denied by the rulings and judgment of that court." *Waters-Pierce Oil Co. v. Texas*, Tex., 1909, 29 S.Ct. 220, 212 U.S. 86, 53 L.Ed. 417.

No substantial federal issue is presented by the judgment sought to be reviewed. 28 U.S.C. Sec. 1257 (3).

The judgment was predicated on two procedural grounds, to-wit:

(1) Petitioner's enumeration of errors were controlled adversely to petitioner by a prior decision, and

(2) Petitioner's objections in the trial court were not timely filed.

Matters of the construction of state statutes are exclusively for the state courts, where no federal right is infringed. *Garner v. State of La.*, 1961, 368 U.S. 157, 7 L.Ed.

2d 207, 82 S.Ct. 248; *Musser v. State of Utah*, 1948, 333 U.S. 95, 92 L.Ed. 562, 68 S.Ct. 397.

Particularly are matters of procedure the province of the state court where no federal right is denied. *Milk Wagon Drivers Union of Chicago v. Meadowmoor Dairies*, 1941, 312 U.S. 287, 85 L.Ed. 836, 61 S.Ct. 552, 132 A.L.R. 1200; *Greenough v. Tax Assessors of City of Newport*, 1947, 331 U.S. 486, 91 L.Ed. 1621, 67 S.Ct. 1400, 172 A.L.R. 329.

If the petitioner was not barred by the law of the case and his failure to file timely objections, his assignment of errors presents no federal question. The right of a state to administer the assets located within its bounds has been clearly recognized by this Court. *Fischer v. American United Life Insurance Company*, 1941, 314 U.S. 549, 86 L.Ed. 444, wherein it is said:

> ". . . The res is located in the (ancillary) state and is in the hands of the receiver there, and, under the law of that state, the claims of the other receivers thereto are inferior to those of local creditors."

See also Annotations, 104 A.L.R. 748-751; *State ex rel van Shaick v. Bowen*, 131 Ohio St. 310, 2 N.E.2d 824; *Lloyds Insurance Company of America v. State*, Texas, 1936, 98 S.W.2d 259; *Re Southern Surety Co. of New York*, 282 N.Y. 54, 24 N.E.2d 845, 127 A.L.R. 497; *Clark v. Preferred Accident Insurance Company of New York*, S.C. 1957, 97 S.E.2d 498; *Couch on Insurance*, 2d Ed., 1959, Sec. 22:90, 91; 53 Corpus Juris 407.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

POOLE, PEARCE and COOPER,
WALTER G. COOPER,
1642 National Bank of Georgia Building,
Atlanta, Georgia 30303,

HATCHER, MEYERSON, OXFORD
& IRVIN,
HENRY M. HATCHER, JR.,
320 First Federal Building,
40 Marietta Street, N. W.
Atlanta, Georgia 30303,
Attorneys for Respondents,

.....

HENRY M. HATCHER, JR.

D

AUG 22 1969

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. [redacted] 170

PREFERRED INSURANCE COMPANY, Grand Rapids, Michigan, a Michigan corporation (in Liquidation, RUSSELL E. VAN HOOSER, Insurance Commissioner of the State of Michigan and Domiciliary Receiver),

Petitioner,

vs.

JAMES L. BENTLEY, Insurance Commissioner of Georgia, and STATE BOARD OF WORKMEN'S COMPENSATION,

Respondents.

PETITIONER'S REPLY BRIEF

ALFRED C. BENNETT,
70 Pine Street,
New York, N. Y. 10005,
IRVIN WALDMAN,
EDWARD J. STODDARD,
Attorneys for Petitioner.

IRVIN WALDMAN,
New York, N. Y.,
Of Counsel.

Adams Press Corp., 130 Cedar Street, N. Y.—Beekman 3-1050-51

TABLE OF CONTENTS

	PAGE
1. As To The Judgment Of October 20, 1967	2
2. As To The Constitutional Questions	3
3. As To The Force Of The Judicial Admission	3
4. As To The Alleged Laches	4
5. As To The Authorities Cited by Claimant	6
CONCLUSION	8

Cases Cited

Arnold v. United States, etc., 263 U. S. 427	3
Crews v. Crews, 162 S. E. 107, 174 Ga. 45	6
Fischer v. American Life Insurance Company, 314 U. S. 549	7
Georgia R. & Power Co. v. Decatur, 262 U. S. 432	3, 5
Hoehn v. Crews, 144 F. 2d 665 (C. A. 10), cert. denied	6
Ker v. California, 374 U. S. 23	5
Lloyds v. State of Ohio, 98 S. W. 2d 259	6
Manhattan Life Insurance Co. v. Cohen, 234 U. S. 123	3
Market St. Ry. Co. v. Railroad Commission of State of Calif., 324 U. S. 548	3
Sabole v. U. S. Steel Corp., 359 F. 2d 7 (C. A. 3)	6

PAGE

Shell v. Strong, 151 F. 2d 909 (C. A. 10) 6

Stilwell, In re, 120 F. 2d 194 (C. A. 2) 6

Tilt v. Kelsey, 207 U. S. 43 3

Truax v. Corrigan, 257 U. S. 312 5

Van Schaick v. Brown, 131 Ohio St. 310, 2 N. E. 2d 827 6

Statutes Cited

Uniform Insurers Liquidation Act of Georgia 3, 5

Uniform Insurers Liquidation Act of Michigan 3, 5

28 U.S.C.:

Sec. 1251(1) 2

Sec. 1257 2

Sec. 1257(3) 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1454

PREFERRED INSURANCE COMPANY, Grand Rapids, Michigan, a Michigan corporation (in Liquidation, RUSSELL E. VAN HOOSER, Insurance Commissioner of the State of Michigan and Domiciliary Receiver),

Petitioner,

vs.

JAMES E. BENTLEY, Insurance Commissioner of Georgia, and STATE BOARD OF WORKMEN'S COMPENSATION,

Respondents.

PETITIONER'S REPLY BRIEF

The Respondents, Insurance Commissioner of Georgia and State Board of Workmen's Compensation, have not responded to the Petition herein. The only response made is by two claimants, Willie Ruth Simmons and H. B. Simmons.

Conceeding that the jurisdiction of this Court for a Writ of Certiorari has been properly invoked under 28 U.S.C. Sec. 1257(3), (inadvertently stated as 28 U.S.C. 1251(1) in the petition), they contend that petitioner is estopped from requesting a review of the final judgment of the Supreme Court of Georgia made February 20, 1969 (App. A, pp. 1a-5a) because he did not petition for the writ from the judgment of that court made October 20, 1967 (App. B, p. 6a), and that none of the constitutional questions were properly raised prior to the submission of the petition herein. These and other contentions are discussed below.

1.

As To The Judgment Of October 20, 1967

The judgment of the Georgia Supreme Court of October 20, 1967 could not have been reviewed because it was not a "final judgment or decree" (28 U.S.C. Sec. 1257).

In the proceedings which *followed* that judgment, as delineated in the judgment which is the subject of the petition (App. A, p. 1a), the Ancillary Receiver set forth and described the claims filed for various types of loss and his recommendations as to their allowance or disallowance, etc. (App. J, pp. 23a-25a), and the trial court thereafter held a hearing thereon to determine them, and directed the filing of a further and final report, etc. (App. K, pp. 26a-27a).

Thus it is clear that no claims were passed upon prior to the making of the judgment of October 20, 1967 and it did "not finally and completely dispose of the subject matter of the litigation either as to the parties or the cause involved". It was not a judgment which could have

been presented to this Court for review. (*Arnold* v. *United States, etc.*, 263 U.S. 427, 432-433, 434.) To the same effect *Georgia R. & Power Co.* v. *Decatur*, 262 U.S. 432, 436-437. It was not the final word of a final court (*Market St. Ry. Co.* v. *Railroad Commission of State of Calif.*, 324 U.S. 548, 551).

2.

As To The Constitutional Questions

Claimants' contention that the constitutional questions were not properly raised in the state court is akin to an ostrich burying his head in the sand. The raising of such constitutional questions is clearly set forth in petitioner's main brief and the appendix with chapter and verse. They were essentially involved and necessarily passed upon in the state court. This Court would have jurisdiction even if they had not been expressly asserted, or were inartistically phrased (*Tilt* v. *Kelsey*, 207 U.S. 43, 51, *Manhattan Life Insurance Co.* v. *Cohen*, 234 U.S. 123, 134).

3.

As To The Force Of The Judicial Admission

The claimants for the first time seek to evade the force and effect of the judicial admission by the respondents as to the Uniform Insurers Liquidation Act of Georgia and Michigan, by saying they were not required to answer it. Of course they were not. Nor were they required to answer any of the other allegations of the pleading of the plaintiffs (respondents), their Commissioner of Insurance and State Board of Workmen's Compensation (App. C., pp. 7a-9a). But it was the basis of their intervention in the state court and the filing of their claims and presence here. If they wanted to take issue with it, they could have raised it in their pleading. They did not.

All they were interested in was the pressing of their claims. They were glad to take the proceeding as it was which gave them that opportunity.

None of the cases cited by them is relevant; and the Georgia statue which they neither quote nor set forth in an appendix, is wholly inapposite.

The use of such a spurious plea to defeat justice and deprive creditors of the defunct company outside Georgia of their property without due process of law, not only deprives them of their constitutional right, but violates the principles of equity in its shock to the conscience.

4.

As To The Alleged Laches

The contention that petitioner was late in making claim to the fund is wholly without merit. Claim was made long before even the interlocutory judgment of October 20, 1967 (App. B, p. 6a) and was referred to in the order of the trial court from which the appeal relating thereto was taken (App. G, pp. 16a-17a). The Ancillary Receiver, in a petition to the trial court, stated that the Domiciliary Receiver had made a written demand upon him for such deposit by letter dated December 23, 1966, that the bar date for filing claims had passed and no workmen's compensation claims had been filed; and that he was in doubt as to the disposition of the special deposit and needed direction from the court (App. E, pp. 11a-12a).

In response thereto the petitioner reiterated his right to such deposits and prayed "for an order directing said Ancillary Receiver to forthwith transfer to the Domiciliary Receiver the Special Deposits of $50,000 and $10,000 respectively * * *" (App. F, pp. 13a-15a).

The order of the trial court made May 23, 1967 respecting such petition and response, expressly made reference to the demand by the Domiciliary Receiver (petitioner herein) and his "opposition to the Ancillary Receiver's retaining the $50,000 Workmen's Compensation deposit" (App. G, pp. 16a-17a).

The demand was reiterated (App. L, pp. 28a-33a), when the trial Court expressly gave petitioner, the Domiciliary Receiver, an opportunity to file objections before permitting a disbursement of the funds (App. K, p. 27a).

The Georgia Supreme Court was, therefore, clearly in error when it stated that the Domiciliary Receiver had been silent and waived his objection. The error is apparent in the very judgment of the court itself where it noted that "the Domiciliary Receiver had demanded that they (the deposits) be delivered to him for administration in Michigan." (App. A, p. 1a). This Court is not bound by the conclusion of the Georgia Court as to facts which the record plainly shows did not exist or in respect to which it was completely mistaken (*Truax* v. *Corrigan,* 257 U.S. 312, 324, *Ker* v. *California,* 374 U.S. 23, 33-34).

In like vein the Georgia Court's ruling that its holding in its interlocutory judgment of October 20, 1967 and particularly its disregard of the judicial admission that Michigan was a reciprocal state and entitled to the benefit of the Georgia Uniform Insurers Liquidation Act (App. A. p. 2a) established the law of the case (App. A. p. 3a), cannot bar this Court from examining and passing upon it. Such ruling and its repetition in the judgment sought to be reviewed, merely underscored the denial of the full faith and credit to which the Michigan statute was entitled by such a judicial admission. The only time this Court could review it was when the proceeding was terminated with a final judgment (*Georgia R. & Power Co.* v. *Decatur, supra,* p. 437).

Moreover, the contention is specious. Claimants do not even suggest, much less show, that the lapse of time resulted in any injury, prejudice or disadvantage to claimants or anyone else, and indeed it is apparent there was was none. Such lapse, even if it existed, may not be raised to defeat justice in the absence of such injury, prejudice or disadvantage (*Shell* v. *Strong* [CA 10], 151 F. [2d] 909, 911, *Hoehn* v. *Crews* [CA 10], 144 F. [2d] 665, 671, cert. denied, *In re Stilwell* [CA 2], 120 F. [2d] 194, 195, *Sabole* v. *U. S. Steel Corp.* [CA 3], 359 F. [2d] 7, 12-13, *Crews* v. *Crews,* 162 S.E. 107, 174 Ga. 45).

5.

As To The Authorities Cited By Claimant

None of the statutes cited by claimants (and neither quoted nor set forth in an appendix) are pertinent. Only a few of the authorities cited are relevant, and, rather than support, they completely destroy claimants' argument.

For example, *Van Schaick* v. *Brown,* 131 Ohio St. 310, 2 N.E. (2d) 827, held that a special deposit for a particular class of policyholders is a trust fund and it was the duty of the Ohio Superintendent of Insurance to release it to the Domiciliary Receiver of an insurance company in liquidation when claims of that particular class were satisfied.

So also *Lloyds* v. *State of Ohio,* 98 S.W. (2d) 259, wherein it was held that a special deposit made for the benefit of creditors holding surety, guaranty or fidelity obligations of the insolvent insurance company, was to be distributed to all such creditors of the insolvent company wherever arising, and reversed the court below which gave priority to Texas claims.

The further lack of substance in claimants' brief is illustrated in their quotation at page 7 of their brief of what purports to be an excerpt from the opinion of this Court in *Fischer* v. *American Life Insurance Company,* 314 U.S. 549.

It is not what it pretends to be. It is an extract from the headnote, is taken out of context, and hasn't the slightest analogy to the case at bar. The question presented was whether the United States District Court in Iowa had jurisdiction to determine a dispute between the Iowa receiver of American Life Insurance Company on the one hand and the Michigan and Texas receivers on the other, as to the rights of the Iowa receiver to assets of the company in his possession deposited for the protection of a *special class of policyholders.* It was held the District Court had such jurisdiction.

The claimants' reference to a construction of the Georgia statutes is sterile. There was none, and if it could be said there was, it stemmed from the refusal of the Georgia Supreme Court to give full faith and credit to the Michigan statute as it was required to do by the judicial admission as discussed in petitioner's Main Brief; and, thereafter, compounding its error, by approving the trial court's refusal to permit petitioner to prove the statute after it had itself inferentially suggested it. A construction of the Georgia statute flowing from a denial of petitioner's constitutional right, it is respectfully submitted, would be clearly invalid.

CONCLUSION

For the reasons set forth in petitioner's brief and in this Repy Brief, the petition for a Writ of Certiorari to the Supreme Court of Georgia should be granted.

Respectfully submitted,

ALFRED C. BENNETT,
IRVIN WALDMAN,
EDWARD J. STODDARD,
Attorneys for Petitioner.

IRVIN WALDMAN, New York City,
Of Counsel.